

# EXHIBIT 13

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KING COUNTY  
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CASE NUMBER: 09-2-22435-8 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

TELEKENEX IXC, INC., a Delaware corporation,

Plaintiff,

vs.

CHARLOTTE RUSSE INCORPORATED, a Delaware Corporation,

Defendant.

NO. 09-2-22435-8 SEA

**AFFIDAVIT OF GIRI DURBHAKULA IN SUPPORT OF MOTION TO VACATE AND SET ASIDE DEFAULT JUDGMENT AND TO QUASH WRIT OF GARNISHMENT**

STATE OF California )  
 ) ss.  
COUNTY OF San Diego )

I, Giri Durbhakula, being first duly sworn upon oath hereby, depose and state as follows:

1. I currently am employed by Charlotte Russe, Inc. ("Charlotte Russe") holding the position of Vice President of Technology. I am over 18 years of age, I have personal knowledge of the matters stated herein, and I am competent to testify to these matters.

2. AuBeta Networks Corporation ("AuBeta") and Charlotte Russe entered into a master services agreement in December of 2004 ("Master Services Agreement"). A true and

AFFIDAVIT OF GIRI DURBHAKULA IN SUPPORT OF MOTION TO VACATE - 1

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1 correct copy of the Master Services Agreement is attached hereto as Exhibit A.

2 3. As part of the Master Services Agreement, Charlotte Russe and AuBeta  
3 initially agreed to a twenty-four month term. At the end of the term, the contract  
4 automatically converted to a month-to-month commitment. On our about April 6, 2007,  
5 Charlotte Russe and AuBeta agreed to extend the contract through March 2009. A true and  
6 correct copy of the contract modification agreement is attached hereto as Exhibit B.

7 4. Under the terms of the modified Master Services Agreement, the contract  
8 automatically converted to a month-to-month commitment beginning on April 1, 2009. This  
9 arrangement was designed to give Charlotte Russe the flexibility of a month-to-month  
10 commitment beginning in April 2009. This was an important provision because it would  
11 enable Charlotte Russe to negotiate another long-term commitment with either AuBeta or  
12 another service provider while AuBeta and Charlotte Russe were in the month-to-month  
13 phase of the Master Services Agreement. In other words, the month-to-month arrangement  
14 was a critical provision in the Master Services Agreement because it enabled Charlotte Russe  
15 to shop for a better deal and/or better services at the end of the two-year commitment without  
16 creating a service interruption.

17 5. Under the termination provision in the Master Services Agreement, AuBeta  
18 must provide 90-days' written notice. This is important because the services provided under  
19 the Master Services Agreement are critical to Charlotte Russe. These services are necessary  
20 to carry out day-to-day store operations such as processing credit card sales, which constitute  
21 the vast majority of store sales.

22 6. Defendant Telekenex, Inc.'s ("Telekenex"), and formerly Aubeta's, obligations  
23 under the Master Services Agreement are simple and straightforward. The Master Services  
24 Agreement requires Telekenex to provide internet and telecommunication connections  
25 between Charlotte Russe stores and the Charlotte Russe data center, much like a telephone

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1 provider provides telephone services. These connections allow Charlotte Ruse to conduct a  
2 wide variety of essential services, such as transaction (e.g., credit card payments) processing,  
3 inventory polling, timekeeping and reporting, as well as basic internet and email connectivity.  
4 Section 1 of the Master Services Agreement requires Aubeta to provide these services  
5 pursuant to various Sales Orders and use its best efforts in so doing.

6 7. Incorporated into the Master Services Agreement are Sales Orders which  
7 specify the precise nature and extent of these services. Attached as Exhibit C hereto is a true  
8 and correct copy of a Sales Order from November 26, 2007. This Sales Order simply  
9 describes the quantity, capacity, and costs of the connective services to be provided to  
10 Charlotte Russe at the Charlotte Russe Data Center in Tempe, Arizona.

11 8. Over the past five years, there has never been a single dispute regarding what  
12 services Aubeta, and now Telekenex, is required to provide under the Master Services  
13 Agreement.

14 9. On March 25, 2009, I received an e-mail from Tom Hunsinger at AuBeta  
15 notifying me that Telekenex had acquired AuBeta. A true and correct copy of this e-mail is  
16 attached as Exhibit D. In the e-mail, Mr. Hunsinger said that Charlotte Russe would need to  
17 "make a commitment to Telekenex to avoid service disruption" and that "[w]e are generating  
18 the paperwork and will have [sic] over to you shortly." Mr. Hunsinger insisted that  
19 everything be completed by Friday, March 27, 2009.

20 10. On Thursday afternoon, March 26, 2009, I notified AuBeta and Telekenex that  
21 I still had not received the paperwork. A true and correct copy of this e-mail is attached as  
22 Exhibit E.

23 11. At approximately 8:48 p.m. on Thursday, March 26, 2009, Mark Radford at  
24 Telekenex finally sent to me a copy of a new proposal.

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AFFIDAVIT OF GIRI DURBHAKULA IN SUPPORT OF MOTION  
TO VACATE 3

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1           12.     The next morning, at approximately 7:55 a.m., Mr. Hunsinger sent to me a  
2 follow-up e-mail warning that Charlotte Russe would need to sign the new agreement by the  
3 end of the day in order to avoid "service disruption." A true and correct copy of this e-mail is  
4 attached as Exhibit F.

5           13.     On Friday morning, March 27, 2009, I had a telephone conversation with Mr  
6 Hunsinger and Brandon Chaney, the CEO of Telekenex. During that telephone call, Mr.  
7 Chaney said that service to Charlotte Russe would be disconnected if it did not sign a multi-  
8 year contract by the end of the day. Promptly after that telephone call, I sent an e-mail to Mr.  
9 Hunsinger confirming the threats that had been made during the call. In response to my e-  
10 mail, Mr. Hunsinger said, "Thanks for the recap." A true and correct copy of this e-mail is  
11 attached as Exhibit G.

12           14.     On Friday afternoon, after I explained that Charlotte Russe could not evaluate  
13 and enter into a multi-year contract within mere hours of the proposal, Mr. Chaney and Mr.  
14 Hunsinger informed me that Charlotte Russe could have a "stay" until Monday, March 30,  
15 2009.

16           15.     On Monday, March 30, 2009, at approximately 3:15 p.m., Mr. Chaney sent to  
17 me a copy of an Assignment and Assumption Agreement, as well as a Contract Amendment.  
18 A true and correct copy of this e-mail is attached as Exhibit H. Mr. Chaney sent to me  
19 another e-mail insisting that we sign those agreements or Charlotte Russe's service would be  
20 shut off. A true and correct copy of this e-mail is attached as Exhibit I. I sent an e-mail back  
21 to Mr. Chaney reminding him that Charlotte Russe had a valid agreement with AuBeta. I  
22 explained that Telekenex and AuBeta had both said that Telekenex had acquired AuBeta's  
23 customers. Thus, Telekenex had no right to demand that Charlotte Russe choose between  
24 entering into a long-term contract or have our services turned off immediately. A true and  
25 correct copy of this e-mail is attached as Exhibit J. Defendant did not relent.

AFFIDAVIT OF GRI DURBHAKULA IN SUPPORT OF MOTION  
TO VACATE - 4

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1. 16. In light of Telekenex' repeated threats, and facing no alternative, Charlotte  
2 Russe signed Defendant's proposed amendment.

3 17. It would be nearly impossible to calculate the financial loss were Telekenex to  
4 disconnect the services it provides to Charlotte Russe. Hundreds of stores may lose their  
5 primary method of processing payments. For each store, countless transactions would not be  
6 processed, customers would leave without completing contemplated purchases, and others  
7 may refuse to shop at the store altogether. This shut down would also have a potentially  
8 lasting effect on Charlotte Russe's goodwill and business reputation. It is absolutely critical  
9 to have these services maintained.

10 18. On May 26, 2009, I met with Mr. Chaney at Charlotte Russe's offices in San  
11 Diego to discuss, among other things, the validity of the recent amendment procured under  
12 threat of a service shutdown. At the conclusion of my meeting with Mr. Chaney and at his  
13 request, I introduced him to Seth Rafkin. Mr. Rafkin is an attorney from Cooley Godward  
14 Kronish LLP, who represents Charlotte Russe on various matters and was also on site at our  
15 offices that day. Mr. Rafkin provided Mr. Chaney with his business card. Later that week, I  
16 sent Mr. Chaney an email summarizing the meeting. A true and correct copy of that email is  
17 attached as Exhibit K.

18 19. In the meantime, Charlotte Russe began disconnecting its services provided by  
19 Telekenex. Charlotte Russe performed such actions consistent with the requirements of the  
20 Master Services Agreements. When Charlotte Russe completed this disconnection, it notified  
21 Telekenex pursuant to the Master Services Agreement. A true and correct copy of that notice  
22 is attached as Exhibit L.

23 20. Prior to that notice, and following June 2, 2009, Telekenex continued to send  
24 Charlotte Russe invoices for the services it was providing. Charlotte Russe paid all invoices it  
25 received. To date, Charlotte Russe has timely paid all outstanding invoices to Telekenex.

AFFIDAVIT OF GIRI DURBHAKULA IN SUPPORT OF MOTION  
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Residing at: San Diego  
My commission expires: 5/8/11

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# Exhibit A



## Master Service Agreement

This MASTER SERVICES AGREEMENT is entered into this day, November 9, 2004, by and between AuBeta Networks Corp, a Washington corporation, 801 South Fidalgo Street, Seattle, Washington 98108 ("AuBeta") and Charlotte Russe Incorporated, 4645 Morena Boulevard, San Diego, California 92117, ("Customer"):

1. **SERVICES.** AuBeta agrees to provide to Customer and Customer agrees to procure from AuBeta certain communication services to be described in Sales Order(s) issued and agreed upon by the parties. Once agreed upon and accepted by the parties, such Sales Order(s) will become a part of this Agreement and be binding upon the parties hereto. Each Sales Order will describe the communication services to be provided ("Services"), the agreed to term ("Contract Term"), the recurring (monthly) and/or non-recurring (provisioning or other) charges, and such information as may be necessary.

AuBeta Networks will use Best Efforts to provide services as ordered, but provides no guarantee. Customer acknowledges, that such services may vary depending on several factors, including but not limited to, the condition and length of copper wiring that comprises the End User Circuit.

2. **INSTALLATION DATE.** The Installation Date will be the date confirmed in writing by AuBeta for each of the customer's circuits. The Installation Date will be the date that AuBeta can provide individual circuit connectivity as defined in the Provisioning Responsibilities Agreement on AuBeta's facilities. Customer will accept Services on the Installation Date.
3. **TERM.** Customer agrees to purchase the Services for a Contract Term of 24-months at the pricing specified in Exhibit A. The Contract Term will start on the date the first circuit between AuBeta's network and Customer is installed. All Sales Orders for DSL circuits will have a contemporaneous contract end date, 24-months from the start of the Contract Term. Sales Orders for frame relay circuits will have a minimum activation period of 12 months per circuit, or be subject to early termination provisions set forth herein. At the end of the Contract Term this Agreement will automatically continue on a month-to-month basis at the then applicable prices until terminated by either party or until a new contract is agreed upon. AuBeta may terminate Service upon 90 days written notice to Customer and Customer may terminate upon 30 days written notice to AuBeta.
4. **RATES AND CHARGES.** Billing will be presented upon Contract Start Date. Any monthly recurring charges ("MRC") will be billed in advance for each 30-day billing cycle in accordance with the Sales Order(s). Any nonrecurring charges ("NRC") will be billed upon the installation Date. AuBeta reserves the right to assess normal shipping charges for shipment of CPE to Customer. AuBeta may adjust the rates and charges for the renewal terms upon written notice provided at least 90 days prior to the end of the Contract Term or any renewal hereof. Payments are due upon presentation of the billing. AuBeta may assess a late fee of 1 1/2% per month. Customer will pay any and all costs incurred in collection of rates and charges due and payable, including reasonable attorney's fees, whether or not a suit is instituted. AuBeta reserves the right to disconnect service if current invoice is 60 days past due and not under dispute. AuBeta will provide written notice of intention to terminate service at 45 days past due and disconnect service on the 60<sup>th</sup> day if payment is not received.
5. **ADDITIONAL CHARGES.** The Customer may be subject to additional charges in the event that non-standard circumstances arise as defined in the Provisioning Responsibilities Agreement.
6. **DEPOSITS.** Without waiving any right of termination or any other rights hereunder, prior to ordering and implementation of service, AuBeta requires a deposit equal to 30% of the estimated initial invoice as stated on the Sales Order(s).

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Customer Initial SM

Date 12/20/04

Additionally, AuBeta may require Customer to tender a deposit, of up to two (2) months of revenue, to guarantee payment hereunder if (1) Customer fails to make a payment when due, (1) Customer files for bankruptcy, or (3) additional service orders exceed established credit limits initially approved by AuBeta. Upon request, Customer will provide AuBeta with information regarding payment history for communications services, number of years in business, financial statement analysis and commercial credit bureau rating. Acceptance of any Sales Order issued hereunder is subject to final approval by AuBeta's Credit Department.

7. **TAXES.** Customer is responsible for payment of any and all federal, state and local taxes, charges or surcharges imposed on or based upon the provision, sale or use of AuBeta's services (excluding taxes based upon AuBeta's income). AuBeta will collect all such taxes, charges or surcharges unless Customer provides AuBeta with proof of exemption. Customer will indemnify AuBeta relative to such exempt status.
8. **TARIFF APPLICATION.** Customer acknowledges that the Service may be subject, in whole or in part, to one or more provisions of state or federal tariffs filed by AuBeta. In the event of any conflict between any provision of this Agreement and any provision of such tariff, the provision of such tariff will control. This Agreement and the Services will be subject to such modifications as may be required or authorized by any regulatory agency in the exercise of its lawful jurisdiction.
9. **COMPLIANCE WITH THE LAW.** This Agreement is subject to all applicable federal, state, and local laws and regulations, rulings, orders, and other actions of government agencies ("Rules"), including, but not limited to: Communications Act of 1934 as amended by the telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the obtaining and continuance of any required approvals, authorizations, or tariffs filed with the FCC or any other governmental agency. AuBeta will use its good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires AuBeta to provide Services other than in accordance with the terms of this Agreement, either party may, without liability to the other party, terminate the affected Services upon 90 days prior written notice to the other party. In performing their obligations under this Agreement, the parties will comply with all applicable federal, state and local laws, regulations, rules and orders.
10. **COMPATIBILITY.** Unless otherwise provided, Customer will provide equipment compatible with the Services and AuBeta's network and facilities. Customer will bear the cost of any additional protective apparatus reasonably required to be installed because of the use of AuBeta's network or facilities by Customer, Customer's lessees or assignees.
11. **NON-INTERFERENCE.** Customer's use of the Services provided herein and any equipment associated therewith will not: (a) interfere with or impair service over AuBeta's network or facilities; (b) impair privacy of any communications over such network or facilities; (c) cause the damage of any nature to AuBeta's assets; (d) be used to frighten, abuse, torment or harass another; or (e) create hazards to AuBeta's officers, directors, employees, subcontractors, agents or users of the aforementioned network or facilities.
12. **MAINTENANCE AND UPGRADE OF FACILITIES.** AuBeta will maintain its facilities and equipment used to provide the Services at no additional charge to Customer, except where work or service calls result from failure or malfunction in, or improper operation of, Customer's facilities and/or equipment. In such event, Customer will reimburse AuBeta for the cost of the required maintenance at AuBeta's standard time and material rate plus any federal, state and/or local taxes imposed upon AuBeta related to such maintenance.  
  
AuBeta reserves the right to suspend service between the hours of 10:00 PM - 4:00 AM PT for scheduled maintenance, planned enhancements and/or upgrades to AuBeta's network
13. **ACCESS TO PREMISES.** Customer will grant AuBeta or cooperate with AuBeta in obtaining access to its premises for the installation, operation, removal, repair and maintenance of the facilities and equipment for the Services hereunder.
14. **LIMITED WARRANTY.** AuBeta will use reasonable efforts, according to industry standards to provide Services on a 24-hour-a-day, 7-day-a-week basis. AuBeta does not warrant that Services will be provided without interruption.

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April 2003  
107-001-03-002

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Customer Initial SJM

Date 12/20/04

In case of a Services interruption caused by AuBeta, AuBeta will credit Customer with AuBeta's service charge for the period during which the Services were interrupted. Such credit will not be given for Services interruption caused by Customer or by activities or facilities furnished by Customer or third parties.

**AuBeta Networks Corp MAKES THIS WARRANTY IN LIEU OF ALL OTHER WARRANTIES AND MAKES NO OTHER WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

15. **LIMITED LIABILITY.** AuBeta's liability and the exclusive remedy of Customer for damages associated with the installation, provision, termination, maintenance, repair or restoration of Services, will be solely limited to an amount no greater than the amounts payable from Customer to AuBeta during the Contract Term.

**IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOSS OF USE, INCOME OR PROFITS, OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES.**

The provisions of this Paragraph 15 will survive the termination of this Agreement and any Sales Order(s) issued hereunder.

16. **INDEMNIFICATION.** AuBeta and Customer will indemnify, hold harmless, and defend the other, its officers, directors, affiliated companies, employees, agents and subcontractors from liabilities, claims or damages arising out of personal injury or death or damage to property to the extent caused by the indemnifying party's breach of any representation, warranty, term or provision herein or to the extent caused by the acts or omissions of such party, its employees, agents, or subcontractors in its performance hereunder.

The provisions of this Paragraph 16 will survive the termination of this Agreement and any Sales Order(s) issued hereunder.

17. **CONFIDENTIALITY.** In the course of performance hereunder, the parties may have access to certain information, the ownership and confidential status of which is highly important to the other party, including, but not limited to: information about products, services, business plans, trade secrets, discoveries, ideas, designs, drawings, specifications, techniques, models, data, programs, documentation, processes, know-how, customer lists, marketing plans, and financial and technical information and other information treated or designated by one of the parties as confidential (herein referred to as "Confidential Information")

Neither party will disclose the other party's Confidential Information, directly or indirectly under any circumstances or by any means, to any third person without the express written consent of the other party, and neither party will copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other party's Confidential Information, except as may be necessary to perform its duties hereunder. Each party will exercise the highest degree of care in safeguarding the other party's Confidential Information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality.

The provisions of this Paragraph 17 will survive the termination of this Agreement and any Sales Order (s) issued hereunder.

18. **TERMINATION.** Either party may terminate this Agreement or any Sales Order(s) issued hereunder upon 60 days written notice to the defaulting party, if the defaulting party: (a) breaches any term or provision herein and fails to cure such breach within the said 30 days; or (b) makes an assignment for the benefit of creditors; or (c) has any proceedings filed against it under any law relating to creditor's rights in general.

AuBeta may terminate the Services if Customer fails to pay any invoice within 60 days of the date of the invoice.

Upon early termination for any reason, other than breach by AuBeta, Customer will immediately reimburse AuBeta the costs of any special construction incurred by AuBeta to provide Services hereunder. In addition, all rates and charges set forth herein for the entire Contract Term will become immediately due and payable by Customer to AuBeta.

19. **FORGE MAJEURE.** In the event that either party's performance is delayed, prevented, obstructed, or inhibited because any ACT of GOD, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of facilities, shortage of curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either party.
20. **NOTICES.** All notices required by or relating to the Services herein will be in writing and will be sent to Customer at the address shown above to AuBeta Networks Corp at: 801 South Fidalgo Street, Seattle, Washington 98108, Attn: Operations Department, with a copy to the Legal Department at the same address. All such notices will be deemed given if mailed postage pre-paid, registered or certified mail, return receipt requested.
21. **ASSIGNMENT.** Customer may not assign its obligations hereunder without the prior written consent of AuBeta, such consent will not be unreasonably withheld.
22. **WAIVER.** The failure of either party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder, will not be construed as a waiver of such provision or any provision herein, and the same will continue in full force. The various rights and remedies given to or reserved by either party herein, or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a condonement or any continuing or subsequent breach of the same provision.
23. **AMENDMENTS, MODIFICATIONS AND SUPPLEMENTS.** Any amendment, modification, supplement or change hereto must be in writing and signed by the parties hereto.
24. **GOVERNING LAW.** This Agreement and the Services hereunder will be governed by and interpreted in accordance with the laws for the State of Washington.
25. **ENTIRE AGREEMENT.** This Agreement, together with the attached Sales Order(s) and any addendum(s) and exhibit(s), set forth the entire agreement of the parties with respect to the subject matter hereof. If any portion of the Agreement is held to be invalid, void, or unenforceable, the remainder of the provisions will nevertheless remain unimpaired and in effect.

AuBeta Networks Corp.

Charlotte Russe Inc.  
Customer Name

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_  
SIGNED: \_\_\_\_\_

BY: Mr. [Signature]  
TITLE: Director of IT  
DATE: 12/20/04  
SIGNED: Shane C. Mikauo

Additional Documents included with this Master Service Agreement:  
Appendix A - PRA, AuBeta SLA, - Private Connect Service, and Sales Orders

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801 South Fidalgo Street  
Seattle, WA 98108  
Telephone: 888-466-0418  
Fax: 206-766-9100  
[www.aubeta.net](http://www.aubeta.net)

Master Service Agreement  
April 2003  
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Customer Initial SM

Date 12/20/04

# Exhibit B

Contract Modification Agreement

The Master Service Agreement (MSA), entered into on November 9, 2004 by and between AuBeta Networks Corporation (AuBeta), a Washington Corporation, located at 801 South Fidalgo Street, Seattle, Washington 98108 and Charlotte Russe Corporation, 4645 Morena Boulevard, San Diego, California 92117 (Customer), is hereby amended, in compliance with Section 23 (twenty-three) of the MSA.

WHEREAS, Customer desires to extend the term of the Services provided by AuBeta.

WHEREAS, AuBeta desires to continue providing Services to Customer.

THEREFORE, AuBeta and Customer, in consideration of the foregoing recitals, the sufficiency of which is hereby acknowledged, hereby agree to amend the MSA as follows:

1. The contract term for all circuits and Services provided by AuBeta to Customer shall be extended to a cotennuous term of 24 months beginning April 1, 2007 and ending April 1, 2009.
2. There shall be no financial penalty imposed on Customer for canceling Digital Subscriber Lines (DSL), provided that the cancellation is less than 10% of Customer's Wide Area Network as provided by AuBeta, measured in any twelve-month period.

AuBeta Networks:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Charlotte Russe Corporation:

By: MB

Title: V.P. I.T.

Date: 4-6-2007

# Exhibit C



DSL Wide Area Networking... Get Connected!

Sales Order

Sale Information

<b>Customer:</b> Charlotte Russe	<b>Date:</b> November 26, 2007
<b>Main Contact:</b>	<b>Quote #:</b> 18813
<b>Telephone:</b>	<b>Number of Circuits:</b> 1
<b>E-Mail Address:</b>	<b>Term:</b> 24
<b>Sale Description:</b>	<b>Inside Agent:</b>
	<b>Sales Agent:</b> Mathew Miller
	<b>Partner:</b>
	<b>Partner Manager:</b>

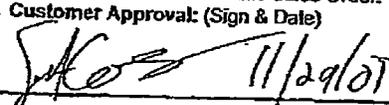
Sale Detail

Location 1: 2005 E Technology Circle / Tempe, AZ 85284  
 Site Name: Charlotte Russe - Photo Center  
 Site Number: 1450  
 Billing Address: 4646 MORENA BLVD / SAN DIEGO, CA 92117  
 DSL Number:  
 Site Phone Number: (800) 229 - 6602

DS3 w/10M PVC (QW) / PRIVATE connect  
 Standard Installation (DS3) (QW) / Installation  
 Customer Owned CPE (AN) / Equipment (CPE)

List Price: \$2565.00 / Sale Price: \$2054.00  
 List Price: \$3275.25 / Sale Price: \$1700.00  
 List Price: \$0.00 / Sale Price: \$0.00

Sale Summary

<b>Notes:</b>	<b>Total Monthly Recurring Charges (MRC)</b>	2054.00
	<b>Total Non-Recurring Charges (NRC)</b>	1700.00
	<b>Estimated Initial Invoice Total</b>	3754.00
	<b>Deposit (30% Of Estimated Initial Invoice)</b>	1126.20
I am an authorized decision maker for my company and agree to the terms of this Sales Order. <b>Customer Approval: (Sign &amp; Date)</b>  11/29/07		

- i. AuBeta Networks Master Service Agreement terms apply
- ii. Quote valid for 30 days
- iii. Rates / Order form does not include tax information. State and federal taxes may apply
- iv. Monthly services are invoiced on a bi-monthly basis
- v. Estimated Initial Invoice - first 3 months of MRC and all NRC
- vi. Deposit received with contract acceptance. Balance due upon installation
- vii. Deposit is 30% of estimated initial invoice

# Exhibit D

**Subject:** RE AuBeta acquisition by Telekenex

**From:** Tom Hunsinger  
**To:** Giri Durbhakula  
**Cc:** mradford@telekenex.com ; mprudell@telekenex.com  
**Sent:** Wed Mar 25 15:55:04 2009  
**Subject:** RE: AuBeta acquisition by Telekenex

Giri,

Thanks for the e-mail and we can have a call next week to address several topics.

How ever we do need to have a conversation quickly concerning your service. Telekenex has to make commitments to the underlying carriers that have supported AuBeta historically to keep the service up. In order to make these commitments we in turn need to have the Aubeta customer's make a commitment to Telekenex to avoid service disruption. We are generating the paperwork and will have over to you shortly. Unfortuneatley we have a very short window to work with in and need this completed by end of business on Friday.

Please feel free to call me to discuss.

Regards,

Tom Hunsinger  
206-576-5334 Desk  
425-442-9030 Mobile

---

**From:** Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
**Sent:** Wednesday, March 25, 2009 3:41 PM  
**To:** Tom Hunsinger  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** RE: AuBeta acquisition by Telekenex

Tom,

Thank you for reaching out to me. As you may know, we rely heavily on the support we get from Aubeta to provide business service at many of our stores throughout the nation.

I would love to chat with you and hear more about the transition and ongoing support model and business continuity plans, however I am currently tied up at an offsite planning meeting and the earliest I could chat with you is early next week.

Can you give me sometimes for Monday and Tuesday and we will set something up?

Thanks very much.

Regards,

Giri Durbhakula  
Vice President Technology  
☎ 858.490.2625

---

**From:** Tom Hunsinger [mailto:tomh@aubeta.net]  
**Sent:** Wednesday, March 25, 2009 8:41 AM  
**To:** Giri Durbhakula  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** AuBeta acquisition by Telekenex

Giri,

I hope all is well.

I wanted to reach out and introduce myself and communicate some recent news here at AuBeta. As you may know by some previous e-mails we have been acquired by Telekenex and registered CLEC out of the bat area.  
[www.telekenex.com](http://www.telekenex.com)

I would like to arrange a time to discuss this transition and our initial goals of business continuity and the shift of the technical support mechanism.

Would you have time this afternoon, or tomorrow morning?

Regards,  
C. Thomas Hunsinger  
**AuBeta Networks Corporation**  
801 S. Fidalgo St. | Seattle, WA 98108  
d: 206.576.5334 | c: 425.442.9030 | f: 206.768.9100  
[www.aubeta.com](http://www.aubeta.com) | [tomh@aubeta.net](mailto:tomh@aubeta.net)



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# Exhibit E

Subject: RE: AuBeta acquisition by Telekenex

From: Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
Sent: Thursday, March 26, 2009 4:00 PM  
To: Tom Hunsinger  
Cc: mradford@telekenex.com; mprudell@telekenex.com  
Subject: RE: AuBeta acquisition by Telekenex

Tom,

I haven't seen any paperwork yet. Please send it over as soon as you can. As I am sure you can appreciate, we have processes to go through for approval and it's very tough with virtually no notice.

Thanks

Regards,

Giri Durbhakula  
Vice President Technology  
858-490-2625

---

From: Tom Hunsinger [mailto:tomh@aubeta.net]  
Sent: Wednesday, March 25, 2009 3:55 PM  
To: Giri Durbhakula  
Cc: mradford@telekenex.com; mprudell@telekenex.com  
Subject: RE: AuBeta acquisition by Telekenex

Giri,

Thanks for the e-mail and we can have a call next week to address several topics.

How ever we do need to have a conversation quickly concerning your service. Telekenex has to make commitments to the underlying carriers that have supported AuBeta historically to keep the service up. In order to make these commitments we in turn need to have the Aubeta customer's make a commitment to Telekenex to avoid service disruption. We are generating the paperwork and will have over to you shortly. Unfortunately we have a very short window to work with in and need this completed by end of business on Friday.

Please feel free to call me to discuss.

Regards,

Tom Hunsinger  
206-576-5334 Desk  
425-442-9030 Mobile

---

**From:** Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
**Sent:** Wednesday, March 25, 2009 3:41 PM  
**To:** Tom Hunsinger  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** RE: AuBeta acquisition by Telekenex

Tom,

Thank you for reaching out to me. As you may know, we rely heavily on the support we get from Aubeta to provide business service at many of our stores throughout the nation.

I would love to chat with you and hear more about the transition and ongoing support model and business continuity plans, however I am currently tied up at an offsite planning meeting and the earliest I could chat with you is early next week.

Can you give me sometimes for Monday and Tuesday and we will set something up?

Thanks very much.

Regards,

Giri Durbhakula  
Vice President Technology  
☎ 858.490.2625

---

**From:** Tom Hunsinger [mailto:tomh@aubeta.net]  
**Sent:** Wednesday, March 25, 2009 8:41 AM  
**To:** Giri Durbhakula  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** AuBeta acquisition by Telekenex

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I wanted to reach out and introduce myself and communicate some recent news here at AuBeta. As you may know by some previous e-mails we have been acquired by Telekenex and registered CLEC out of the bal area.  
[www.telekenex.com](http://www.telekenex.com)

I would like to arrange a time to discuss this transition and our initial goals of business continuity and the shift of the technical support mechanism.

Would you have time this afternoon, or tomorrow morning?

Regards,  
C. Thomas Hunsinger  
**AuBeta Networks Corporation**  
801 S. Fidalgo St. | Seattle, WA 98108  
d: 206.576.5334 | c: 425.442.9030 | f: 206.766.9100  
[www.aubeta.com](http://www.aubeta.com) | [tomh@aubeta.net](mailto:tomh@aubeta.net)



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# Exhibit F

Subject: RE: AuBeta acquisition by Telekenex

From: Tom Hunsinger [mailto:tomh@aubeta.net]  
Sent: Friday, March 27, 2009 7:55 AM  
To: Giri Durbhakula  
Cc: mradford@telekenex.com; mprudell@telekenex.com  
Subject: RE: AuBeta acquisition by Telekenex

Giri,

Good Morning I hope all is well.

I think Mark Radford my associate may have this over last night but wanted to attach the agreements just in case.

Let me know if you have any questions, and please have this in by end of day to avoid service disruption.

Thanks,  
C. Thomas Hunsinger  
AuBeta Networks Corporation  
801 S. Fidalgo St. | Seattle, WA 98108  
d: 206.576.5334 | c: 425.442.9030 | f: 206.766.9100  
www.aubeta.com | tomh@aubeta.net



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---

From: Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
Sent: Thursday, March 26, 2009 4:00 PM  
To: Tom Hunsinger  
Cc: mradford@telekenex.com; mprudell@telekenex.com  
Subject: RE: AuBeta acquisition by Telekenex

Tom,

I haven't seen any paperwork yet. Please send it over as soon as you can. As I am sure you can appreciate, we have processes to go through for approval and it's very tough with virtually no notice.

Thanks

Regards,

Giri Durbhakula  
Vice President Technology

8 858.490.2625

---

**From:** Tom Hunsinger [mailto:tomh@aubeta.net]  
**Sent:** Wednesday, March 25, 2009 3:55 PM  
**To:** Giri Durbhakula  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** RE: AuBeta acquisition by Telekenex

Giri,

Thanks for the e-mail and we can have a call next week to address several topics.

How ever we do need to have a conversation quickly concerning your service. Telekenex has to make commitments to the underlying carriers that have supported AuBeta historically to keep the service up. In order to make these commitments we in turn need to have the Aubeta customer's make a commitment to Telekenex to avoid service disruption. We are generating the paperwork and will have over to you shortly. Unfortunately we have a very short window to work with in and need this completed by end of business on Friday.

Please feel free to call me to discuss.

Regards,

Tom Hunsinger  
206-576-5334 Desk  
425-442-9030 Mobile

---

**From:** Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
**Sent:** Wednesday, March 25, 2009 3:41 PM  
**To:** Tom Hunsinger  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** RE: AuBeta acquisition by Telekenex

Tom,

Thank you for reaching out to me. As you may know, we rely heavily on the support we get from Aubeta to provide business service at many of our stores throughout the nation.

I would love to chat with you and hear more about the transition and ongoing support model and business continuity plans, however I am currently tied up at an offsite planning meeting and the earliest I could chat with you is early next week.

Can you give me sometimes for Monday and Tuesday and we will set something up?

Thanks very much.

Regards,

Giri Durbhakula  
Vice President Technology  
☎ 858.490.2625

---

**From:** Tom Hunsinger [mailto:tomh@aubeta.net]  
**Sent:** Wednesday, March 25, 2009 8:41 AM  
**To:** Giri Durbhakula  
**Cc:** mradford@telekenex.com; mprudell@telekenex.com  
**Subject:** AuBeta acquisition by Telekenex

Giri,

I hope all is well.

I wanted to reach out and introduce myself and communicate some recent news here at AuBeta. As you may know by some previous e-mails we have been acquired by Telekenex and registered CLEC out of the bat area.  
[www.telekenex.com](http://www.telekenex.com)

I would like to arrange a time to discuss this transition and our initial goals of business continuity and the shift of the technical support mechanism.

Would you have time this afternoon, or tomorrow morning?

Regards,  
C. Thomas Hunsinger

**AuBeta Networks Corporation**

801-S: Fidalgo St.-| Seattle, WA 98108  
d: 206.576.5334 | c: 425.442.9030 | f: 206.766.9100  
[www.aubeta.com](http://www.aubeta.com) | [tomh@aubeta.net](mailto:tomh@aubeta.net)



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# Exhibit G

Subject: RE: follow-up

From: Tom Hunsinger [mailto:tomh@aubeta.net]  
Sent: Friday, March 27, 2009 1:36 PM  
To: Giri Durbhakula  
Cc: bchaney@telekenex.com  
Subject: RE: follow-up

Thanks for the recap.

Tom

---

From: Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
Sent: Friday, March 27, 2009 1:13 PM  
To: Tom Hunsinger  
Subject: follow-up

Tom,

This follows the call we just had with you and Brandon Chaney. As you know, Telekenex has made it clear that service will be disconnected to nearly 200 of our stores if we do not sign a 36-month contract today. You and Mr. Chaney advised that you will seek a "stay" of service disconnection and let us know at our call set for 2pm today. I have already sent the meeting invite over, but just to make sure you have the details again:

+1.866.365.4406 // conference code: 4902625

Thanks and we will talk in a little less than 1 hour's time.

Regards,

Giri Durbhakula  
Vice President Technology  
Charlotte Russe  
☎ 858.490.2625  
☎ 858.610.8131  
☎ 858.490.3635  
✉ giri.durbhakula@charlotterusse.com

# Exhibit H

**Subject:** RE: Call today at 10:00 AM can we adjust to 11:00?

**From:** Brandon Chaney [mailto:bchaney@telekenex.com]  
**Sent:** Monday, March 30, 2009 3:15 PM  
**To:** Giri Durbhakula  
**Subject:** RE: Call today at 10:00 AM can we adjust to 11:00?

Giri,

Thanks for the call today.

I am working on the letter you requested. It will be forthcoming.

BC

---

**From:** Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
**Sent:** Monday, March 30, 2009 10:10 AM  
**To:** Tom Hunsinger  
**Cc:** Brandon Chaney  
**Subject:** RE: Call today at 10:00 AM can we adjust to 11:00?

Lets make it 11.30am

---

~~I have a meeting conflict at 11:00 am.~~

Thanks

Regards,

Giri Durbhakula  
Vice President Technology  
☎ 858.490.2625

---

**From:** Tom Hunsinger [mailto:tomh@aubeta.net]  
**Sent:** Monday, March 30, 2009 9:33 AM  
**To:** Giri Durbhakula  
**Cc:** Brandon Chaney  
**Subject:** Call today at 10:00 AM can we adjust to 11:00?

Please let me if that will work or another would be better.

THX!  
C. Thomas Hunsinger  
**AuBeta Networks Corporation**  
801 S. Fidalgo St. | Seattle, WA 98108  
t: 206.576.5334 | c: 425.442.9030 | f: 206.766.9100  
www.aubeta.com | tomh@aubeta.net



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## ASSIGNMENT AND ASSUMPTION OF AGREEMENT

This Assignment and Assumption Agreement (this "Agreement"), dated as of March 30, 2009 (the "Effective Date"), is made and entered into by and between AuBeta Networks Corporation, a Washington corporation, 801 South Fidalgo Street, Seattle, Washington 98108 ("AuBeta"), and Telekenex IXC, Inc., a Delaware corporation, 3221 20th Street, San Francisco, California 94110 ("Telekenex"), and Charlotte Russe Incorporated, a \_\_\_\_\_, 4645 Morena Boulevard, San Diego, California 92117 ("Charlotte").

WHEREAS AuBeta and Charlotte entered into that certain Master Services Agreement, dated as of November 4, 2004, a true and correct copy of which is attached hereto as Exhibit A (the "Assigned Agreement");

WHEREAS Telekenex intends to acquire some or all of the assets and business of AuBeta and, accordingly, desires to accept the assignment and assume and become liable for all of AuBeta's rights, obligations, and interests under the Assigned Agreement;

WHEREAS AuBeta intends to transfer some or all of its assets and business to Telekenex and, accordingly, desires to assign all of its rights, obligations, and interests under the Assigned Agreement to Telekenex; and

WHEREAS Charlotte, subject to the terms and conditions of this Agreement, consents to the assignment and assumption of the Assigned Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and for other good and valuable consideration, the parties, intending to be legally bound, do hereby agree as follows:

1. Recitals. All of the foregoing Recitals are true and correct and are hereby incorporated herein by reference.

2. Assignment and Assumption. AuBeta hereby transfers, assigns, and sets over to Telekenex all of AuBeta's rights, obligations, and interests under the Assigned Agreement, without limitation of any kind, and Telekenex hereby accepts the foregoing assignment by AuBeta and assumes and becomes liable for all of AuBeta's rights, obligations, and interests under the Assigned Agreement.

3. Charlotte Acknowledgment. Charlotte, being the other party to the Assigned Agreement, hereby consents to the assignment and assumption effected by this Agreement, and reiterates its intention to perform under this Agreement once assigned to and assumed by Telekenex.

4. Release. AuBeta hereby releases Charlotte from any and all claims, liabilities, losses, damages, causes of action, costs, and expenses in connection with the Assigned Agreement, including, without limitation, any past or future payment obligations.

5. Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of California, without giving effect to any choice of law or conflict of laws rules or provisions.

6. Facsimile Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

**AUBETA NETWORKS CORPORATION**

**TELEKENEX IXC, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Ethan Hernandez, CEO

Brandon Chaney, CEO

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGED AND CONSENTED TO:**

**CHARLOTTE RUSSE INCORPORATED**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
(ASSIGNED AGREEMENT)

## CONTRACT AMENDMENT

This Amendment ("Amendment"), dated as of March 30, 2009 (the "Effective Date"), modifies and supplements the terms of that certain Master Services Agreement (the "Agreement"), dated as of November 9, 2004, originally by and between AuBeta Networks and Charlotte Russe Incorporated ("Charlotte") and subsequently assigned by AuBeta to Telekenex IXC, Inc. ("Telekenex") pursuant to that certain Assignment and Assumption of Agreement, dated as of March 30, 2009.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and for other good and valuable consideration, Telekenex and Charlotte, intending to be legally bound, do hereby agree as follows:

1. The Agreement is by and between Telekenex and Charlotte and all references to AuBeta in the Agreement are binding upon Telekenex.

2. Section 3 of the Agreement is hereby amended as follows:

The Contract Term for all circuits and Services provided by Telekenex to Charlotte shall be amended to a coterminous term of 36 months; starting at the date Charlotte executes this agreement.

3. The Agreement is hereby amended as follows:

**SECURITY COMPLIANCE.** AuBeta represents and warrants that AuBeta is and will be compliant with the Payment Card Industry Data Security Standard ("PCIDSS) requirements for cardholder data that are prescribed in the Visa Operating Regulations or otherwise issued by Visa, as they may be amended from time to time (collectively, the "PCIDSS Requirements"), as audited by a VISA authorized third party auditor. Upon Charlotte's written request to AuBeta from time to time, AuBeta shall provide Charlotte with a written certification, within thirty (30) days of the request from Charlotte, from AuBeta's Chief Financial Officer that AuBeta is then compliant with PCIDSS requirements as set forth herein.

4. All of the covenants, conditions, representations and warranties of the Agreement are incorporated herein by reference.

5. If there is any conflict between this Amendment and the Agreement, this Amendment shall control.

6. All capitalized terms used and not otherwise defined or modified herein shall have the meaning ascribed to them in the Agreement.

7. Except as modified and supplemented by this Amendment, the Agreement shall remain in full force and effect in accordance with the provisions thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

**CHARLOTTE RUSSE INCORPORATED**

**TELEKENEX IXC, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Brandon Cheney, CEO

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit I

**Subject:** Urgent Matter about your Service Continuity

**From:** Brandon Chaney [mailto:bchaney@telekenex.com]  
**Sent:** Monday, March 30, 2009 4:17 PM  
**To:** Giri Durbhakula  
**Subject:** Urgent Matter about your Service Continuity

Giri,

Thanks for the call today.

As we discussed, we need to get an Assignment/Assumption Agreement and Contract Amendment executed today or your service could be disconnected by the underlying carriers. We have stepped into this situation at AuBeta to help with your business continuity. During the week of March 18<sup>th</sup>, most of the carriers had submitted disconnect orders for non-payment for your circuits.

AuBeta Networks has recently sold its assets to Telekenex and we are working with the underlying carriers to keep your services up. This will require us to commit to a multi-year agreement with them. Therefore, we need Charlotte Russe to commit to us as well.

I sent over to you a simple Assignment and Assumption Agreement so the same terms you negotiated with AuBeta will be in effect. In addition, a Contract Amendment document was attached that added the term extension and language you requested around our PCI certification.

Telekenex looks forward to working with you, as I mentioned on the phone, I am available to meet in your San Diego office on Thursday or Friday to share with you Telekenex's 14 year history.

Regards,

Brandon Chaney  
CEO  
Telekenex

**From:** Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]  
**Sent:** Monday, March 30, 2009 10:10 AM  
**To:** Tom Hunsinger  
**Cc:** Brandon Chaney  
**Subject:** RE: Call today at 10:00 AM can we adjust to 11:00?

Lets make it 11.30am

I have a meeting conflict at 11.00 am.

Thanks

Regards,

Giri Durbhakula  
Vice President Technology  
☎ 858.490.2625

---

**From:** Tom Hunsinger [mailto:tomh@aubeta.net]  
**Sent:** Monday, March 30, 2009 9:33 AM  
**To:** Giri Durbhakula  
**Cc:** Brandon Chaney  
**Subject:** Call today at 10:00 AM can we adjust to 11:00?

Please let me if that will work or another would be better.

THX!

C. Thomas Hunsinger

**AuBeta Networks Corporation**

801 S. Fidalgo St. | Seattle, WA 98108  
d: 206.576.5334 | c: 425.442.9030 | f: 206.766.9100  
www.aubeta.com | tomh@aubeta.net



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# Exhibit J

Brendan,

Attached please find the Amendment you sent me today at 3.15pm; we made two slight modifications and they are reflected in the redline version. I have attached a signed clean version for your records.

With regards to the Assignment and Assumption document you sent – We do not believe our signature is required on this since the November 7, 2004 Aubeta-Charlotte Russe agreement does not require our consent to assignment. We obviously do not contest to AuBeta's rights to assign the agreement; however, to date we have received several conflicting statements from Telekenex about the status of our Agreement with Aubeta. For example, both Telekenex and Aubeta issued public statements on March 18, 2009 stating that Telekenex had acquired AuBeta's customers. Last week, Tom told us that the AuBeta agreement "may or may not" have been assigned to Telekenex. Later that day, you advised that the contract had not been assigned but your latest email from today states that AuBeta did in fact sell its assets to Telekenex.

In summary, I would like to reiterate our frustration and disappointment that we are in this situation. Charlotte Russe has an existing agreement with AuBeta, which we believe should be honored. Despite our multiple requests, no one has explained why this agreement is somehow no longer valid. Instead, we have been presented with a demand that we sign up for a long term commitment or service to 185 of our stores will be shut off today, effectively depriving us of the flexibility under the AuBeta agreement that we bargained for. To further complicate matters, this demand was put to us last Thursday (3/26) with a demand that we sign a new agreement by the end of the next day, which in turn were not provided to us until 8:48 p.m. later that evening. At 2.30pm on Friday (3/27), you advised that we could have a one day extension, i.e., close of business Monday 3/30. During our 11.30am conference call today, Telekenex said it would now provide a different set of documents, which were not provided until 3:15 p.m. today. I have explained on multiple occasions, that we are a large organization (500+ stores) and we cannot just simply enter into a substantial agreement of this nature without sufficient notice and planning. In any event, it has been made clear repeatedly that our service would be shut off if we do not sign up to a long term commitment. I am sure you can appreciate why we believe we have been treated in an extremely unfair manner.

Thank you.

Regards,

Giri Durbhakula  
Vice President Technology  
Charlotte Russe

☎ 858.490.2625

☎ 858.610.8131

☎ 858.490.3635

✉ [giri.durbhakula@charlotterusse.com](mailto:giri.durbhakula@charlotterusse.com)

# Exhibit K

**Subject:** Meeting recap

**From:** Giri Durbhakula [mailto:giri.durbhakula@CharlotteRusse.com]

**Sent:** Friday, May 29, 2009 5:46 PM

**To:** Brandon Chaney

**Subject:** Meeting recap

Brandon,

This follows our meeting from this past Tuesday. As you know, it appears we have a disagreement over the enforceability of the March 2009 amendment. I appreciate, however, the professional tone of our discussion and your assurances that no service disruption will occur as a result of our disagreement. I also appreciate your candor in acknowledging that the manner in which the transition from AuBeta to Telekenex came about was not ideal. You have our counsel's contact information and should feel free to pass it on as you think appropriate. Obviously, we hope we can resolve this issue productively.

On other fronts, as you know, we also discussed other services that Telekenex provides, e.g., audio conferencing and managed services/co-lo data centre. As I expressed at the meeting, we would be interested in learning more about those service offerings in more detail.

I understand that you are traveling this week and will likely be back in touch next week.

Thanks.

Regards,

Giri Durbhakula

Vice President Technology

Charlotte Russe

☎ 858.490.2625

☎ 858.610.8131

☎ 858.490.3635

✉ [giri.durbhakula@charlotterusse.com](mailto:giri.durbhakula@charlotterusse.com)

# Exhibit L

**From:** Tina Cammarello [tina.cammarello@charlotterusse.com]  
**Sent:** Thursday, July 16, 2009 11:59 AM  
**To:** 'Daniel Miller'  
**Cc:** 'chuckvondra@com-strat.com'; Rafkin, Seth; Giri Durbhakula  
**Subject:** Charlotte Russe / Aubeta Disconnect Notice  
**Attachments:** Aubeta Sites\_Store Address.xls

Daniel

As per our conversation this morning I am requesting that all our Aubeta sites (159) and the circuit located in our Tempe Datacenter be disconnected as of today. Previous emails had been sent to you for disconnect but I have attached a list of all 159 sites that were recently converted please let me know if anything else is needed.

Again Thank you and it was nice working with you.

Tina Cammarello  
Charlotte Russe  
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23	Aubeta	10.10.23.254	Boulevard	702-792-2110	702-792-1446	3514 South Maryland Parkway	Las Vegas	NV	89109
25	Aubeta	10.10.26.254	Moreno Valley	951-653-7161	951-653-1739	22500 Town Circle, Space #1138	Moreno Valley	CA	92533
37	Aubeta	10.10.37.254	Galleria at Sunset (Henderson)	702-898-8677	702-898-8680	1300 West Sunset Road, Space #1309	Henderson	NV	89014
42	Aubeta	10.10.42.254	Pearlridge Center	808-486-3644	808-486-3804	231 Pearlridge Center, Sp# 14-03	Aiea	HI	96701
62	Aubeta	10.10.62.254	Haywood	854-676-0577	854-676-0398	700 Haywood Road, Box #222	Greenville	SC	29607
79	Aubeta	10.10.79.254	Citrus Park	813-926-8719	813-926-8758	8021 Citrus Park Town Center Mall, Space #8076	Tampa	FL	33625
80	Aubeta	10.10.80.254	Walden Galleria	716-681-6490	716-681-6748	G104 Walden Galleria	Buffalo	NY	14225
81	Aubeta	10.10.81.254	Straford Square	630-893-4475	630-893-4478	416 Straford Square	Bloomington	IL	60108
82	Aubeta	10.10.82.254	Hamilton Mall	609-645-3883	609-645-6844	4403 Black Horse Pike, Space #143	Mays Landing	NJ	08330
92	Aubeta	10.10.92.254	Temecula Promenade	951-296-0553	951-296-0555	40820 Winchester Road, Space #1200	Temecula	CA	92591
93	Aubeta	10.10.93.254	Katy Mills	281-644-2040	281-644-2042	5000 Katy Mills Circle, Space #661	Katy	TX	77494
94	Aubeta	10.10.94.254	Providence Place	401-270-4370	401-270-4371	100 Francis Street, Space #B-308	Providence	RI	02903
96	Aubeta	10.10.96.254	Tri-County Mall	513-671-3888	513-671-3029	11700 Princeton Pike, Space #D21	Cincinnati	OH	45248
100	Aubeta	10.10.100.254	Countryside Mall	727-712-1967	727-712-0396	27001 U.S. Hwy. 19 North, Space #1061 & 1062	Clearwater	FL	33761
103	Aubeta	10.10.103.254	Holyoke Mall	413-532-3770	413-532-2999	50 Holyoke Street, Space #H314	Holyoke	MA	01040
104	Aubeta	10.10.104.254	Crossgates Mall	518-452-2163	518-452-2173	1 Crossgates Mall Road, Space #P201	Albany	NY	12203
106	Aubeta	10.10.106.254	Galleria at Crystal Run	845-692-3137	845-692-3782	1 Galleria Drive, Space #D202	Middletown	NY	10941
113	Aubeta	10.10.113.254	Opry Mills	615-514-5555	615-514-5557	436 Opry Mills Drive, Space #436	Nashville	TN	37214
114	Aubeta	10.10.114.254	Plaza Carolina	787-762-8912	787-768-6391	65 Infantry Hwy & Fragoso Ave., Space #124	Carolina	PR	00983
118	Aubeta	10.10.118.254	Plaza las Americas	787-767-8649	787-767-4221	525 F.D. Roosevelt Avenue, Space #52	Hato Rey	PR	00918
119	Aubeta	10.10.119.254	Crystal Mall	860-437-7199	860-437-7033	8050 Hartford Turnpike, Space #R214	Waterford	CT	06385
122	Aubeta	10.10.122.254	Stonebriar Centre	972-668-0357	972-668-0359	2501 Preston Road, Space #1086	Frisco	TX	75034
124	Aubeta	10.10.124.254	Galleria @ Roseville	916-788-4300	916-788-4343	1151 Galleria Blvd., Space #253	Roseville	CA	95678
135	Aubeta	10.10.135.254	Belz Factory Outlet	787-256-0938	787-256-0930	State Road 3, Km. 18.4, Building 3, Suite #60	Canovanas	PR	00729
141	Aubeta	10.10.141.254	Smith Haven Mall	631-780-0015	631-780-0017	465 Smith Haven Mall, Space D4 & D5	Lake Grove	NY	11755
159	Aubeta	10.10.159.254	Glenbrook Square	260-471-9567	260-471-9008	4201 Coldwater Road, Space #M1	Fort Wayne	IN	46805
161	Aubeta	10.10.161.254	Hickory Hollow	615-717-1511	615-717-9994	5252 Hickory Hollow Pkwy., Space #2050	Anfloch	TN	37013
174	Aubeta	10.10.174.254	The Shops at Las Americas	619-934-7221	619-934-7224	4345 Camino De La Plaza, Space #M-286	San Diego	CA	92173
175	Aubeta	10.10.175.254	Discover Mills	678-847-5446	678-847-5448	5900 Sugarloaf Pkwy., Space #215	Lawrenceville	GA	30043
180	Aubeta	10.10.180.254	Puente Hills	626-965-8471	626-965-6057	474 Puente Hills Mall, Space #353	City of Industry	CA	91748
187	Aubeta	10.10.187.254	Burlington Town Center	802-651-8966	802-651-9806	49 Church Street, Space #1062	Burlington	VT	05042
189	Aubeta	10.10.189.254	The Lakes	231-798-9780	231-798-9820	5600 Harvey Street, Suite #1020	Muskegon	MI	49444
191	Aubeta	10.10.191.254	Penn Square Mall	405-858-0858	405-858-0859	1901 NW Expressway, Space #1106	Oklahoma City	OK	73118
200	Aubeta	10.10.200.254	Ingram Park	210-767-0801	210-767-8177	6301 N.W. Loop 410, Space #S-16A-1	San Antonio	TX	78238
202	Aubeta	10.10.202.254	DeSoto Square	941-750-9911	941-750-9796	303 U.S. Hwy 301 Blvd. West, Space #609A	Bradenton	FL	34205
206	Aubeta	10.10.206.254	Regency Mall	262-554-4480	262-554-4520	5666 Durand Ave., Space #B240	Racine	WI	53405
207	Aubeta	10.10.207.254	Deerbrook Mall	281-446-8750	281-446-5822	20131 Highway 59, Space # 2072	Humble	TX	77338
211	Aubeta	10.10.211.254	Nashaminy Mall	215-364-9112	215-364-8755	707 Nashaminy Mall Space # 639	Bensalem	PA	19020
212	Aubeta	10.10.212.254	Tulsa Promenade	918-665-0291	918-665-0280	4107 South Yale, Space # 123	Tulsa	OK	74135
213	Aubeta	10.10.213.254	Dover Mall	302-741-2470	302-741-2473	1365 North Dupont Hwy, Space # 4060	Dover	DE	19901
219	Aubeta	10.10.219.254	Sooner Fashion Mall	405-673-9399	405-673-9398	3329 W. Main Street	Norman	OK	73072
223	Aubeta	10.10.223.254	Quail Springs Mall	405-755-7933	405-755-7938	2501 W. Memorial Road, Space #208	Oklahoma City	OK	73134
233	Aubeta	10.10.233.254	Sarasota Square	941-926-4402	941-926-4820	8201 South Tamiami Trail, Space # A37B	Sarasota	FL	34238
245	Aubeta	10.10.245.254	Apache	507-288-3806	507-288-6209	333 Apache Mall, Space # 692	Rochester	MN	55902
247	Aubeta	10.10.247.254	The Shops at Grand Prairie	309-693-2441	309-693-2651	5201 West War Memorial Drive, Space 535	Peoria	IL	61615
248	Aubeta	10.10.248.254	Buckland Hills Mall	860-648-9096	860-648-0148	194 Buckland Hills Drive, Space 2088	Manchester	CT	06040
251	Aubeta	10.10.251.254	Provo Towne Center	801-494-2004	801-494-2006	1200 South Towne Center Blvd, Space 1020	Provo	UT	84601
262	Aubeta	10.11.8.254	Northwoods Mall	843-553-2956	843-553-2873	2150 Northwoods Blvd Sp E7	N. Charleston	SC	29406-4021
263	Aubeta	10.11.9.254	Greece Ridge Center	585-225-9740	585-225-9749	171 Greece Ridge Center Drive, Sp H-15	Rochester	NY	14626
267	Aubeta	10.11.13.254	Towne West Square	316-942-4780	316-942-4590	4600 W. Kellogg Sp# J07A	Wichita	KS	67209
274	Aubeta	10.11.20.254	Mall Of America	952-854-6662	952-854-2386	60 E. Broadway Space E141A	Bloomington	MO	63042
283	Aubeta	10.11.29.254	St. Louis Mills	314-227-5185	314-227-5188	5555 St Louis Mills Boulevard, Sp# 542	Hazelwood	MO	63042
289	Aubeta	10.11.35.254	Waikiki Premium Outlet	808-680-9466	808-680-0035	94-798 Lumiana St Space 409	Waipahu	HI	96797
290	Aubeta	10.11.36.254	Colonial Mall	478-477-5333	478-477-1074	3661 Eisenhower Parkway Space 121	Macon	GA	31206
293	Aubeta	10.11.39.254	Coastal Grand	843-839-2996	843-839-3220	200 Coastal Grand Circle	Myrtle Beach	SC	29577
294	Aubeta	10.11.40.254	Enfield Mall	860-741-5507	860-741-3809	90 Elm Street, Space 56	Enfield	CT	06082
296	Aubeta	10.11.42.254	Milkcreek Mall	814-864-4843	814-864-0237	5800 Peach Street, Space 622	Erie	PA	16565
301	Aubeta	10.11.47.254	CherryVale Mall	815-332-5925	815-332-5057	7200 Harrison Avenue, Sp# G23	Rockford	IL	61112
308	Aubeta	10.11.54.254	Gateway Center	402-466-8121	402-466-6123	#5 Gateway Mall, Sp# 292	Lincoln	NE	68505
311	Aubeta	10.11.57.254	Oak Court	901-766-5991	901-766-5993	4465 Poplar Avenue, Sp# 2314A	Memphis	TN	38117
316	Aubeta	10.11.62.254	Logan Valley Mall	814-943-4484	814-943-4587	Route 220 & Goods Lane, Sp# 416	Allentown	PA	16602
323	Aubeta	10.11.69.254	Imperial Valley Mall	760-352-8104	760-352-8369	3451 South Dogwood Avenue, Sp# 1056	El Centro	CA	92243
325	Aubeta	10.11.71.254	Coolsprings Galleria	615-771-1962	615-771-4133	1800 Galleria Boulevard, Sp# 2080	Franklin	TN	37067
330	Aubeta	10.11.76.254	Spotsylvania Mall	540-786-9149	540-786-9168	230 Spotsylvania Mall (combo of Sp# 230&235)	Fredericksburg	VA	22407
345	Aubeta	10.11.92.254	The Galleria at Pittsburgh Mills	724-274-3901	724-274-3903	434 Pittsburgh Mills Circle	Tarentum	PA	15084
360	Aubeta	10.11.106.254	Triangle Town Center	919-792-0246	919-792-0248	5959 Triangle Town Blvd, Sp# 1037 (combo of 1037&1039)	Raleigh	NC	27616
361	Aubeta	10.11.107.254	Cross Creek Mall	910-868-5222	910-868-8444	B-4 Cross Creek Road	Fayetteville	NC	28303
363	Aubeta	10.11.109.254	The Mall at Barnes Crossing	662-841-8296	662-841-8299	1001 Barnes Crossing Road, Sp# 224	Tupelo	MS	38801
370	Aubeta	10.11.116.254	Acadiana Mall	337-993-1663	337-993-1442	5725 Johnston Street, Sp# A257	Lafayette	LA	70503
376	Aubeta	10.11.122.254	Branson Landing	417-239-0690	417-239-0692	405 Branson Landing	Branson	MO	65616
377	Aubeta	10.11.123.254	NorthPark Mississippi	601-991-0779	601-991-2257	1200 East County Line Road, Sp# 1412	Ridgeland	MS	39157
378	Aubeta	10.11.124.254	Oak View Mall	402-334-4990	402-334-4860	3001 South 144th Street, Sp# D15	Omaha	NE	68144
380	Aubeta	10.11.126.254	Chapel Hill Ohio	330-630-2863	330-630-2863	2000 Brittain Road, Sp# 336	Akron	OH	44310
383	Aubeta	10.11.129.254	Lakeland Square	863-859-3380	863-859-0311	3800 US Highway 98 North, Sp# 796 (previously 758)	Lakeland	FL	33809
385	Aubeta	10.11.131.254	Fox Run Mall	603-436-0192	603-431-7455	50 Fox Run Road, Sp# G-26	Newington	NH	03801
389	Aubeta	10.11.135.254	Huntington Mall	304-733-2638	304-733-2670	One Mall Road, Sp# 460	Bardonia	NY	25504
390	Aubeta	10.11.136.254	Eastgate Mall	513-947-8103	513-947-8108	4601-200 Eastgate Blvd, Sp# 836 (combo of 532&536)	Cincinnati	OH	45245
391	Aubeta	10.11.137.254	The Avenue Viera	321-636-5252	321-636-5345	2261 Towne Center Avenue, Sp# 870	Viera	FL	32940
397	Aubeta	10.11.143.254	Eastern Shore Centre	251-621-2055	251-621-5281	30500 Slate Road Highway 181, Sp# 400	Spanish Fort	AL	36527
398	Aubeta	10.11.144.254	Valley Hills	828-322-3716	828-322-4965	1960 Highway 70 SE, Sp# 222	Hickory	NC	28602
403	Aubeta	10.11.149.254	Volusia Mall	386-258-1323	386-58-1391	1700 W International Speedway Blvd., Sp# 249	Daytona	FL	32114
404	Aubeta	10.11.150.254	Pinnacle Hills	479-631-4501	479-631-4506	2203 S. Promenade Blvd, Space F155	Rogers	AR	72758
405	Aubeta	10.11.151.254	The Shops at Dos Lagos	951-277-0463	951-277-9462	2795 Cabot Drive, Suite 125	Corona	CA	92877
412	Aubeta	10.11.158.254	Sawgrass Mills	954-846-2144	954-846-2136	12801 West Sunrise Boulevard, Sp# 621	Sunrise	FL	33323
418	Aubeta	10.11.164.254	Edgewater Mall	228-385-8832	228-385-8845	2600 Beach Blvd., Sp #2	Biloxi	MS	39531
419	Aubeta	10.11.165.254	Georgia Square	706-353-1189	706-353-2547	3700 Atlanta Hwy, Sp #48	Athens	GA	30606
420	Aubeta	10.11.166.254	Boulevard	716-836-2200	716-836-2400	730 Alberta Drive, Space 409	Amherst	NY	14226
423	Aubeta	10.11.169.254	Rio Grande Premium Outlets	958-514-2946	958-514-2976	5001 East US Expressway 83, Suite 304	Mercedes	TX	78570
425	Aubeta	10.11.171.254	Northgate Mall	919-286-2497	919-286-7913	1058 West Club Blvd., Sp #201	Durham	NC	27701

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427	Aubeta	10.11.173.254	York Galleria	717-751-4799	717-751-4636	2899 Whiteford Rd., Sp #118	York	PA	17402
428	Aubeta	10.11.174.254	First Colony	281-980-1333	281-980-1365	16535 Southwest Freeway, Sp #123	Sugarland	TX	77479
430	Aubeta	10.11.176.254	Post Oak	979-693-7304	979-693-7357	1500 Harvey Road, Sp #2020	College Station	TX	77840
431	Aubeta	10.11.177.254	Viewmont	570-343-2446	570-343-5563	100 Viewmont Mall, Sp #771	Scranton	PA	18508
432	Aubeta	10.11.178.254	Oakdale Mall	607-798-1606	607-798-1608	601-635 Harry L Dr. Space 66-69	Johnson City	NY	13790
437	Aubeta	10.11.183.254	Monmouth Mall	732-542-2596	732-542-2704	180 Route 35 & 36, Space 1004	Eatontown	NJ	7724
438	Aubeta	10.11.184.254	Westgate Mall	806-356-8704	806-356-8763	7701 West Interstate 40, Space 354	Amarillo	TX	79121
439	Aubeta	10.11.185.254	River Hills	507-625-6940	507-625-5891	1850 Adams St., Space 418	Mankato	MN	56001
441	Aubeta	10.11.187.254	Bangor Mall	207-947-5400	207-947-9705	663 Stillwater Ave., Sp #1085A	Bangor	ME	
442	Aubeta	10.11.188.254	Eastdale Mall	334-272-6388	334-272-6404	1000 Eastdale Mall, Space E-1	Montgomery	AL	36117
443	Aubeta	10.11.189.254	Salmon Run Mall	315-788-0801	315-788-0821	21182 Salmon Run Mall Loop West, Space D-106	Watertown	NY	13601
444	Aubeta	10.11.190.254	Green Acres	516-825-0560	516-825-0615	2034 Green Acres Mall, Space 44	Valley Stream	NY	11581
445	Aubeta	10.11.191.254	The Crossroads Michigan	249-324-5893	249-324-6017	6850 South Westnedge Avenue, Sp# 252	Portage	MI	49024
447	Aubeta	10.11.193.254	Poughkeepsie	845-296-1013	845-396-1683	2001 South Rd., Sp #A206	Poughkeepsie	NY	12501
448	Aubeta	10.11.194.254	Coastland Center	239-435-0145	239-435-0938	1900 Tamiami Trail North Space D-3	Naples	FL	34102
449	Aubeta	10.11.195.254	Augusta Mall	706-733-6106	706-736-6267	3450 Wrightsboro Rd., Space 1430	Augusta	GA	30909
453	Aubeta	10.11.199.254	Pecanland Mall	318-398-2699	318-398-2669	4700 Millhaven Rd. Ste. 1210	Monroe	LA	71203
454	Aubeta	10.11.200.254	Sangertown Square	315-732-5249	315-732-5294	Route 5 & 5A, Space L60	New Hartford	NY	13413
456	Aubeta	10.11.202.254	Paddock	352-854-0679	352-854-1598	1000 College Rd., Space 142E	Ocala	FL	34474
460	Aubeta	10.11.206.254	Centre at Salisbury	410-543-9320	410-543-9328	2300 N. Salisbury Blvd., Space B-109	Salisbury	MD	21801
461	Aubeta	10.11.207.254	Locust Grove	770-288-3380	770-288-3382	1000 Tanger Dr., Space 205 & 207	Locust Grove	GA	30248
464	Aubeta	10.11.210.254	Foley Outlet Center	251-970-2390	251-970-2394	2601 South McKenzie St., Space 322	Foley	AL	36535
465	Aubeta	10.11.211.254	The Shops at Fallen Timbers	419-878-0781	419-878-2853	3100 Main Street Space 1145	Maumee	OH	43537
468	Aubeta	10.11.214.254	Summit Sierra	775-853-6656	775-853-5988	13921 S Virginia Rd Ste 122	Reno	NV	89511
469	Aubeta	10.11.215.254	Philadelphia Premium Outlets	610-705-5982		18 Lightcap Road Space 763	Polsboro	PA	19464
471	Aubeta	10.11.217.254	University Mall "Tuscoloosa"	205-462-2041	205-462-2069	1701 McFarland Boulevard E, Space 818	Tuscaloosa	AL	35404
472	Aubeta	10.11.218.254	Central Mall	479-452-1774	479-452-1798	5111 Rogan Avenue, Space 184	Forth Smith	AR	72903
473	Aubeta	10.11.219.254	Miller Hill Mall	218-727-1007	218-727-1422	1600 Miller Trunk Hwy., Space E06C	Duluth	MN	55811
476	Aubeta	10.11.222.254	Shops at River Crossing	478-474-8226	478-474-8251	5080 Riverside Dr. Space 222	Macon	GA	31210
478	Aubeta	10.11.224.254	Port Charlotte Town Center	941-235-0161		1441 Tamiami Trail # 933-941	Port Charlotte	FL	33948
479	Aubeta	10.11.225.254	Volley Mall "Hagenstown"	301-582-2515	301-582-3918	17301 Volley Mall Road, Space 298	Hagenstown	MD	21740
480	Aubeta	10.11.226.254	Appleblossom Mall	540-662-4312	540-662-3423	1850 Appleblossom Drive Space A107A	Winchester	VA	22601
481	Aubeta	10.11.227.254	Williamsburg Outlets	757-259-9326		5425 Richmond Rd. Space F200	Williamsburg	VA	23188
483	Aubeta	10.11.229.254	Francis Scott Key	301-695-1256	301-695-1258	5500 Buckeystown Pike, Space 246	Fredricksburg	MD	21703
484	Aubeta	10.11.230.254	Rushmore Mall	605-342-0786	605-342-1357	2200 North Maple Avenue, Space 220	Rapid City	SD	57701
485	Aubeta	10.11.231.254	Mall at Fairfield Commons	937-429-2068	8/2008	2727 Fairfield Commons, Space E129	Beavercreek	OH	45431
486	Aubeta	10.11.232.254	Grand Central Mall "Parkersburg"	304-420-2453	304-420-0993	272 Grand Central Mall Space 272	Vienna	WV	26105
487	Aubeta	10.11.233.254	Hamilton Place Mall "Cholanoooga"	423-553-8135	423-553-8542	2100 Hamilton Place Blvd. Space 110	Cholanoooga	TN	37421
488	Aubeta	10.11.234.254	Southern Hills Mall "Sioux City"	712-276-2720	712-276-2724	4400 Sergeant Rd. Space 512 & 514	Sioux City	IA	51106
489	Aubeta	10.11.235.254	Northpark Mall "Davenport"	563-445-7902	563-445-7905	320 West Kimberly Road, Space 0019A	Davenport	IA	52806
490	Aubeta	10.11.236.254	Bayshore Town Center	414-332-2980	414-332-3024	5800 N. Bayshore Dr. Space B130	Glendale	WI	53127
491	Aubeta	10.11.237.254	Great Northern Mall	315-622-0405	315-622-0407	4155 Route 31 Space G124	Clay	NY	13041
492	Aubeta	10.11.238.254	Brass Mill Center	203-573-1967	203-573-1981	495 Union St. Space 2062 & 2064	Waterbury	CT	06706
493	Aubeta	10.11.239.254	Bells Fork	360-714-6151	360-714-8524	One Bells Fork Pkwy, Space #209	Bellingham	WA	98226
496	Aubeta	10.11.242.254	River Valley Mall	540-381-4505	540-381-2443	782 New River Road Space 812	Christiansburg	VA	24073
497	Aubeta	10.11.243.254	Oakwood Mall "Eau Claire"	715-833-1402	715-833-1408	4800 Golf Road, Sp #0428	Eau Claire	WI	54701
499	Aubeta	10.11.245.254	Wiregrass Commons "Dothan"	334-712-1030	334-712-1036	900 Commons Drive, Space 90	Dothan	AL	36303
500	Aubeta	10.11.246.254	Burnsville	952-892-4556	952-892-4569	1178 Burnsville Center Space 1046	Burnsville	MN	55306
501	Aubeta	10.11.247.254	Cross County Center	914-375-2791	11/2008	4 Xavier Drive, Space S140	Yonkers	NY	10704
503	Aubeta	10.11.249.254	King's Plaza	718-724-2377	718-724-2368	5100 Kings Plaza, Space 143	Brooklyn Center	NY	11234
504	Aubeta	10.11.250.254	Nittany Mall	814-231-1872	814-237-1027	2901 East College Ave. Space 966	State College	PA	16801
505	Aubeta	10.11.251.254	West Park Mall	573-335-6948	573-335-6985	3049 Wilkams St., Space 1278 & 133	Cape Girardeau	MO	63703
507	Aubeta	10.11.253.254	Greenville	252-355-5630	252-355-8795	714 E. Greenville Blvd. Space E2 & E3	Greenville	NC	27858
508	Aubeta	10.11.254.254	Market Place	217-359-4090	217-359-4077	2000 North Neil St. Space 285	Champaign	IL	61821
509	Aubeta	10.12.1.254	Gonzales Outlet Center	225-644-0509	225-644-8233	2410 Tanger Boulevard, Space 147	Gonzales	LA	70737
511	Aubeta	10.12.3.254	Pearland Town Center	713-340-1108	713-340-1149	Route 518 & 288, Sp #1335	Pearland	TX	77581
512	Aubeta	10.12.4.254	Columbiana Centre	803-407-4446	803-407-4472	100 Columbiana Circle	Columbia	SC	29212
513	Aubeta	10.12.5.254	Independence Mall	781-585-1058		101 Independence Mall Way	Kingston	MA	2364
514	Aubeta	10.12.6.254	Hudson Valley Mall	845-336-6132	845-336-4043	1300 Usher Avenue	Kingston	NY	12401
515	Aubeta	10.12.7.254	Rehoboth Beach	302-226-1426	302-226-2390	36470 Seaside Outlet Dr. Space #600	Rehoboth Beach	DE	19971
519	Aubeta	10.12.11.254	Las Catalinas			PR #52, Esq #156, Space 540-	Caguas	PR	00725
521	Aubeta	10.12.13.254	Ellenton Outlets	206-431-7960	206-241-9018	5461 Factory Shops Blvd.	Ellenton	FL	34222
523	Aubeta	10.12.15.254	Puerto Rico Outlets	787-846-7417		1 Prime Outlets Blvd. KM 54.8, space 820	Barceloneta	PR	00617
525	Aubeta	10.12.17.254	The Shops at Wiregrass	813-991-5601		28151 State Rd. 56, Sp #920	Tampa	FL	33543
526	Aubeta	10.12.18.254	The Oaks	805-778-9202	805-778-9142	222 W. Hicrest Dr., Sp #M096	Thousand Oaks	CA	91340
527	Aubeta	10.12.19.254	Jersey Shore	732-493-3388		Garden State Pkwy & Route 66, Space #241	Tinton Falls	NJ	07753
537	Aubeta	10.12.29.254	McCain Mall			3929 McCain Blvd., Space H048	N Little Rock	AR	72116
543	Aubeta	10.12.35.254	Grove City Outlets	724-748-3186	724-748-3407	1911 Leesburg Grove City Road, Suite #1065	Grove City	PA	16127
548	Aubeta	10.12.40.254	Trumbull	203-373-9512	203-373-9526	5065 Main St., Space #220	Trumbull	CT	06611
553	Aubeta	10.12.45.254	Prime Outlet	904-819-6844	904-819-6880	500 Prime Outlet Blvd, Space 105	St. Augustine	FL	32084

# EXHIBIT 14

ORIGINAL FILED

08 JUL -9 PM 2:25

CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

filing

MHP

1 Donald S. Simon (Bar No. 189992)  
2 Garret D. Murai (Bar No. 215667)  
3 **WENDEL, ROSEN, BLACK & DEAN LLP**  
4 1111 Broadway, 24th Floor  
5 Oakland, CA 94607-4036  
6 Telephone: (510) 834-6600  
7 Facsimile: (510) 834-1928  
8 Email: gmurai@wendel.com

9 Attorneys for Plaintiff  
10 ERIC F. ANDERSON, INCORPORATED

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 ERIC F. ANDERSON, INCORPORATED,  
14 a California corporation,

15 Plaintiff,

16 vs.

17 TELEKENEX, INC., a Delaware  
18 corporation; and DOES 1 through 10,  
19 inclusive,

20 Defendants.

CV 08 3319  
Case No.

**DECLARATION OF GARRET D. MURAI  
IN SUPPORT OF EX PARTE MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW CAUSE  
RE PRELIMINARY INJUNCTION**

21 I, Garret D. Murai, declare:

22 1. I am an attorney licensed to practice law in the State of California and am licensed  
23 to practice before the United States District Court for the Northern District of California. I am an  
24 associate with Wendel, Rosen, Black & Dean LLP, attorneys of record for Plaintiff ERIC F.  
25 ANDERSON, INCORPORATED ("EFA").

26 2. This declaration is made in support of EFA's Ex Parte Motion for Temporary  
27 Restraining Order and Order to Show Cause Re. Preliminary Injunction. I have personal  
28 knowledge of the matters stated herein and if called upon to testify could and would competently  
do so.

3. On June 3, 2008, I sent a letter to Anthony Zabit, President and Chief Operating  
Officer of Telekenex. A true and correct copy of my letter is attached hereto as Exhibit A. In my

Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607-4036

1 letter, I explained the ongoing problems EFA was experiencing with Defendant TELEKENEX,  
2 INC.'s ("Telekenex") services, requested that Telekenex port EFA's telephone numbers, and  
3 explained that a letter sent by Telekenex's dated May 28, 2008 failed to fully quote paragraph 6  
4 of the Master Service Agreement ("Agreement") between EFA and Telekenex, which provides  
5 that "[i]n the event of a Telekenex Default, Customer may terminate this Agreement without  
6 penalty."

7 4. On June 26, 2008, I called and left a message for Mr. Zabit to contact me  
8 regarding a notice and letter from Telekenex dated June 24, 2008 and followed up with another  
9 letter to Mr. Zabit. A true and correct copy my letter is attached as Exhibit B. In my letter, I  
10 explained that Telekenex's refusal to port EFA's telephone numbers was in violation of the  
11 Federal Communication Commission's Local Number Portability rules and requested that  
12 Telekenex port EFA's telephone numbers no later than July 1, 2008. Mr. Zabit never returned my  
13 telephone call.

14 5. On the afternoon of July 8, 2008, I tried to contact Mr. Zabit, EFA's account  
15 representative at Telekenex, the accounting department at Telekenex, and Bob Finley, Chief  
16 Financial Officer of Telekenex. I was finally able to reach Mr. Finley who stated that EFA's  
17 telephones would not be reconnected until EFA paid Telekenex's early termination fee. I  
18 explained to Mr. Finley that EFA had disputed Telekenex's early termination fee, that I had sent  
19 two letters to Mr. Zabit explaining this, had placed two telephone calls to Mr. Zabit that were not  
20 returned, and that Telekenex was required by law to port EFA's telephone numbers. *Id.* When I  
21 explained that if EFA's telephones were not reconnected, that EFA would have no alternative but  
22 to seek injunctive relief from the court, Mr. Finley stated that he would see me in court.

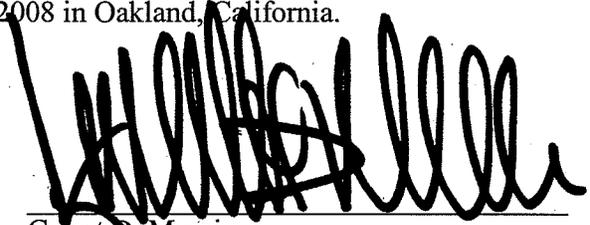
23 6. On July 9, 2008, I caused to be personally served a copy of EFA's Ex Parte  
24 Motion for Temporary Restraining Order and Order to Show Cause re. Preliminary Injunction on  
25 Telekenex's agent for service of process as indicated in the accompanying proof of service.

26 ///  
27 ///  
28 ///

Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607-4036

1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

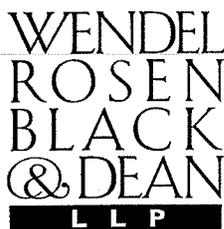
3 Executed this 7 day of July 2008 in Oakland, California.



4  
5  
6 Garret D. Murai  
7  
8  
9

10  
11 Wendel, Rosen, Black & Dean LLP  
12 1111 Broadway, 24th Floor  
13 Oakland, CA 94607-4036  
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**EXHIBIT A**



ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
gmurai@wendel.com

June 3, 2008

**VIA CERTIFIED MAIL RETURN**  
**RECEIPT REQUESTED**

Anthony Zabit  
TELEKENEX  
3221 Twentieth Street  
San Francisco, CA 94110

Re: **Eric F. Anderson, Incorporated/Telekenex**  
Your Account No. 75

Dear Mr. Zabit:

Our law firm represents Eric F. Anderson, Incorporated ("EFA"). EFA is a Telekenex customer.

EFA recently received two letters from Telekenex dated May 28, 2008. The first letter, which is unsigned and was apparently sent by Federal Express, is captioned "Customer Notice of Discontinuance of Service for Non-Payment of Bills." Notwithstanding the caption, the letter states that EFA's account is current and that "... the amount outstanding on your account is now \$0.00."

Nevertheless, the letter goes on to state that EFA has incurred a \$79,431.75 early termination fee "which requires a deposit amount equal to two times the New Charges as shown on your latest Invoice Statement. This is according to the Master Service Agreement (paragraphs 2 & 9) . . . ." The letter goes on to state that "[o]n 6/05/2008 at 5 p.m. a disconnect order will be submitted to our order cancellation department if payment has not been received by that time."

The second letter, which is signed by Brad Stasek of Telekenex, states that "Telekenex has received a Notice of Termination of the Master Service Agreement" and that "[e]arly termination of your Agreement will generate an Early Termination fee of \$79,431.75." The letter goes on to quote, in part, paragraph 6 of the Master Service Agreement entered into by and between EFA and Telekenex on August 9, 2006.

A copy of both letters are enclosed.

Anthony Zabit  
June 3, 2008  
Page 2

W. J. EL, ROSEN, BLACK & DEAN LLP

EFA has experienced ongoing problems with Telekenex's services. These problems have included static, dropped calls, and issues related to equipment orders dating as far back as 2006. Unfortunately, Telekenex has been unable to correct these problems. EFA has and continues to experience problems with static, dropped calls, and issues related to equipment orders. Enclosed are a few of the emails sent by EFA to Telekenex, and other EFA documents, documenting the problems they have had with Telekenex's services.

As a result, EFA has found it necessary to secure the services of another telecommunication provider, LCR Premysis Technologies. EFA's termination of its Master Service Agreement with Telekenex is, for the reasons described above, not subject to an early termination fee. Section 6 of the Master Agreement (signed by you), when quoted in full (as opposed to Telekenex's second letter) provides:

Events of Default. A "Default" shall occur if (a) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for five (5) calendar days after written notice from Telekenex; or (b) either party fails to perform or observe any material term or obligation (other than making payment) contained in this Agreement, and such failure remains uncorrected for thirty (30) calendar days after written notice from the non-defaulting party informing the defaulting party of such failure. If Customer uses the Services for any unlawful purpose or in any unlawful manner, Telekenex shall have the right to immediately suspend and/or terminate any or all Services hereunder without notice to Customer.

In the event of a Customer Default for any reason, Telekenex may: (i) suspend Service to Customer; (ii) cease accepting or processing orders for Services and/or; (iii) terminate this Agreement. If this Agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination penalties shall apply. Customer agrees to pay Telekenex's reasonable expenses (including attorney and collection agency fees) incurred in enforcing Telekenex's rights in the event of a Customer Default.

In the event of a Telekenex Default, Customer may terminate this Agreement without penalty. Customer will, however, remain liable for all charges incurred for Services provided prior to Customer's termination of this Agreement. (emphasis added).

Moreover, Section 18 of the Master Service Agreement provides in pertinent part:

Early Termination Charges: Early termination charges apply if, 1) Customer terminates this Agreement prior to the expiration of any Term, for reasons other than for "Cause" (as defined below); or 2) Telekenex terminates this Agreement for Cause, Customer will be required to pay, in addition to all accrued but unpaid charges through the date of such termination, the amount obtained by multiplying

Anthony Zabit  
June 3, 2008  
Page 3

WENDEL, ROSEN, BLACK & DEAN LLP

the individual MVCs by the remaining number of months left in each respective term. **As used herein, "Cause" shall mean a failure of the other party to perform a material obligation under this Agreement which failure is not remedied by the defaulting party within thirty (30) days of written notice thereof.** (emphasis added).

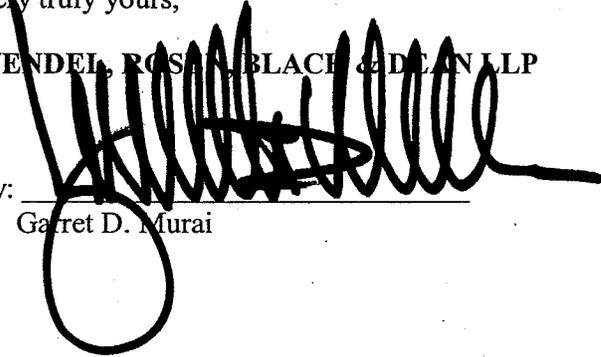
EFA has provided written notice to Telekenex on multiple occasions of its failure and/or inability to provide reliable, quality telephony services. EFA's written notices, which describe the same reoccurring problems, were sent on multiple occasions in 2006, 2007, and 2008. Nevertheless, Telekenex has been unable to correct the reoccurring problems experienced by EFA. As such, Telekenex has and continues to be in default under the Master Service Agreement and EFA's termination of that agreement is without penalty.

We expect that Telekenex will work cooperatively with EFA's new telephony service provider, LCR Premysis Technologies, 1650 Amphlett Boulevard, Suite 115, San Mateo, California, Telephone: (650) 345-6605, in porting EFA's telephone numbers as required by the FCC's local number portability rules.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

By: 

Garret D. Murai

GDM:cme  
Enclosures  
cc: Geza Paulovits



May 28, 2008

VIA FEDERAL EXPRESS

**Customer Notice of Discontinuance of Service for Non-Payment of Bills**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

Re: Telekenex Acct# 75

Dear CUSTOMER,

You are currently in default of your Master Service Agreement, and as a result Telekenex considers you a credit risk. Payment in the amount of **\$79,431.75** must be received in our office no later than **6/05/2008**. This total reflects two separate amounts.

First, the amount outstanding on your account is now **\$0.00**.

Second, you have incurred **\$79,431.75** Early Termination fees which requires a deposit amount equal to two times the New Charges as shown on your latest Invoice Statement. This is according to the Master Service Agreement (paragraphs 2 & 9) as follows :

2. Payment Terms. Invoices for Services are due and payable in U.S. dollars net (30) thirty. If any invoice is not paid by Past Due Date, Telekenex may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy Telekenex may have under this Agreement and its tariffs, whether at law, or in equity.
  
9. Additional Assurances. If at any time during the term of this Agreement there is a material and adverse change in a Customer's financial condition, which shall be determined by Telekenex in its reasonable discretion, then Telekenex may require a reasonable deposit or increase the amount of an existing Customer deposit by a reasonable amount. If Customer refuses to provide such deposits, Telekenex may seek to terminate this Agreement. In such an event, all unpaid invoice amounts will be due immediately as will early termination and cancellation charges.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLLFREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)



On 6/05/2008 at 5 p.m. a disconnect order will be submitted to our order cancellation department if payment has not been received by that time. If your service is disconnected, you will be required to pay a deposit equal to two months' usage, in addition to reconnect charges of \$35 per line. Your regulated local phone service will not be disconnected for non-payment of any charges for unregulated telecommunications services that may be included in the amount shown above.

To prevent an interruption in service and to avoid the additional charges please mail your payment today to:

Accounts Receivable  
Telekenex, Inc.  
3221 20th Street, Third Floor  
San Francisco, California 94110

If you believe that the amount now overdue was billed in error, Telekenex will investigate the disputed amount upon written request. If, after investigation and review by Telekenex, there is still disagreement over the amount due, you may appeal the dispute to the Consumer Affairs Branch of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, 1-800-649-7570.

If you have any questions regarding the amount due or wish to make arrangements for payment, please contact your Telekenex representative at (888) 469-5100. If you do not respond prior to the payment deadline we will disconnect service without further notice.

Service Representative  
Telekenex, Inc.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

Delivering Business-Grade IP Solutions  
[www.telekenex.com](http://www.telekenex.com)



**May 28, 2008**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

RE: Telekenex Acct # 75

Dear Customer,

Telekenex has received a Notice of Termination of the Master Service Agreement.

Our records indicate that the subject account Agreement has 15 months remaining. Early termination of your Agreement will generate an Early Termination fee of **\$79,431.75**

This letter shall serve as a notice of default for early termination under the Master Service Agreement. Per the terms of your Master Service Agreement you may cure your default by sending us a letter rescinding your cancellation and reaffirming your intent to fulfill the remainder of the term of the contract. Please refer to paragraph 6 of the Master Service Agreement:

In the event of a Customer Default for any reason, Telekenex may: (1) suspend Service to Customer, (2) cease accepting or processing orders for service and/or, (3) terminate this agreement. If this agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination penalties shall apply. Customer agrees to pay Telekenex reasonable expenses (including attorney and collection agency fees) incurred in enforcing Telekenex rights in the event of a Customer Default.

Thank you,

Brad Stasek

Accounts Receivable  
Telekenex, Inc.  
3221 Twentieth Street 3<sup>rd</sup> Floor  
San Francisco, CA. 94110

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)

<b>Date</b>	<b>Time</b>	<b>Case#</b>	<b>Desc</b>
11/29/2006	16:30	10827	T1 Down for aprox 5 min
12/5/2006	7:28		Systems down
12/5/2006	9:15		Geza Dropped Call
12/5/2006	14:30		Malcolm Dropped Call
12/7/2006	15:37		Geza Dropped Call from 925.659.0383

Lance Tokuno

---

**From:** Geza Paulovits  
**Sent:** Tuesday, December 05, 2006 9:25 AM  
**To:** 'thealy@ndw.com'  
**Cc:** Lance Tokuno  
**Subject:** phone problems

Hi Tim,

This morning at around 7:28, our phone system went blank with the following message on each terminal: Configuring CM list. They came back after a few minutes.

Today at 9:15, I called the same client the system dropped a few weeks ago, and IT DROPPED HER AGAIN! This is our most valuable client. Her phone number is (925) 467-2420. Why did it drop her this time? I have never had this problem with her in the past, so I don't think the problem is on Safeway's end.

Thanks,

GEza

**Lance Tokuno**

---

**From:** Geza Paulovits  
**Sent:** Thursday, December 07, 2006 3:38 PM  
**To:** Lance Tokuno  
**Subject:** dropped call

Hi Lance:

Originating # :510.430.8404  
Terminating # :925.659.0383  
Time:3:37 PM  
What happened: Call drop, static and etc: call dropped

Thanks,

Geza

**Sheryl Gonsalves**

---

**From:** Sheryl Gonsalves  
**Sent:** Tuesday, May 15, 2007 10:30 AM  
**To:** 'support@telekenex.com'  
**Cc:** 'romero@telekenex.com'  
**Subject:** Need to place and order for remote user  
**Importance:** High

I need to order another remote phone user and since the last one I ordered back on April 9<sup>th</sup> was programmed incorrectly once again I would like to try and get it right this time. EFA is spending way too much money out in the field to have our computer consultant get the phone up and running. At over a \$100.00 per hour and he's spending over an hour each time.

I need to place and order:

1-remote phone with power supply, **programmed** for remote location

Set up 1 new user  
Mike Leavitt  
510 268 6737 phone  
510 268 6837 fax virtual  
[mike@efainc.com](mailto:mike@efainc.com) email address

This new user and phone needs to be shipped to our San Leandro office attn: Sheryl Gonsalves  
1066 Beecher Street  
San Leandro, CA 94577

I would like to know when this ships out and be supplied with a tracking number.

Please call me if you have any questions.

Thanks

Sheryl

**Eric F. Anderson Inc.**  
General Building Contractor  
*Since 1945*  
**Sheryl Gonsalves**  
Accounting Manager

---

1066 Beecher Street  
P.O. Box 2076  
San Leandro, CA 94577  
tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

5/30/2008

**Geza Paulovits**

**From:** Geza Paulovits  
**Sent:** Friday, November 30, 2007 6:21 AM  
**To:** 'jmohr@telekenex.com'  
**Cc:** Sheryl Gonsalves; Lance Tokuno; 'Tim Healy'; 'lbani@telekenex.com'  
**Subject:** RE: Phone system down: RFO

Jason, thanks for the update and explanation of your technical problems. Although your level of detail is very thorough and it's apparent Telekenex is doing its best to resolve your problems, we feel a third, fourth, and fifth "major questions remain unanswered"

- 3) What is Telekenex doing to ensure its unacceptably high occurrence of outages stops
- 4) How is Telekenex planning on reimbursing its clients for this adverse impact on their businesses, and
- 5) When are the Telekenex salesmen and company executives who promised your uninterrupted service visiting clients to
  1. review our contracts
  2. talk about the assurances they made on reliability of service

~Geza Paulovits  
 (510) 430-8404

---

**From:** Sheryl Gonsalves  
**Sent:** Thursday, November 29, 2007 11:50 AM  
**To:** Geza Paulovits; Lance Tokuno  
**Subject:** FW: Phone system down: RFO

**Eric F. Anderson Inc.**  
 General Building Contractor  
*Since 1945*  
**Sheryl Gonsalves**  
 Accounting Manager

---

1066 Beecher Street  
 P.O. Box 2076  
 San Leandro, CA 94577  
 direct line: 510.268.6703 direct fax: 510.268.6803  
 tel: 510.430.8404 fax: 510.430.2561  
 email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
 web site: [www.efainc.com](http://www.efainc.com)

---

**From:** Jason Mohr [mailto:[jmohr@telekenex.com](mailto:jmohr@telekenex.com)]  
**Sent:** Thursday, November 29, 2007 11:32 AM  
**To:** Sheryl Gonsalves  
**Subject:** RE: Phone system down: RFO

Sheryl,

Tuesday at around 3:10 PM Pacific Time we had one of our Bay Area Hosted Provider Edge Routers malfunction. This router crashed its active supervisor engine and failed over to its standby supervisor. For a reason that is yet unexplained, when this failover occurred, a channelized OC12 connection stopped routing traffic. While the OC12 seemed to not function, all other connections in the router continued to function properly. Within minutes we had a team working on this issue and had Cisco TAC

5/30/2008

(the service provider division known as the Backbone TAC) logged into the system and checked its functionality. There are quite a few steps to diagnosis, and we wanted to bring the OC12 customers back on line without affecting active customers. As this is a very large router, it took some time to verify that the only customers affected were connected to the OC12, after isolating the issue to the OC12 card, which was not exhibiting any indication of failure other than IP routing not functioning we sought to correct the issue with this card. We attempted to restore this card through several steps, without success. We reset the OC12 card. We verified that the primary Supervisor was a credible option to switch back to. We then switched back to the primary Supervisor, all of which did not resolve the routing issue over the OC12 card. In the end we completely reloaded the router. Only then were we able to fully restore the OC12 functionality. At this time two major questions remain unanswered.

- 1: What was the root cause of this initial active Supervisor Engine's crash, this question as yet remains unanswered.
- 2: Why, when the standby Supervisor Engine took over did the OC12 card fail to pass IP traffic, even when all the card's interfaces showed no sign of failure?

This issue is being treated with the highest priority by our technical staff and has been escalated at Cisco Backbone TAC for resolution. We were able to pull a crash-dump file from the router that is now at Cisco for analysis. We apologize for the Length of time it took to resolve this outage. It is always our intent to act in the best interest of all our customers, and restoring service as quickly as possible is of course foremost in our minds at such times. However, balancing the quick resolution with diagnosis of an issue's root cause to avoid a repeat occurrence is the most prudent path, and the path we chose here. We will continue to work toward the long term resolution and correction of these root causes as we gain more insight into their existence and true character over the next day or so.

I hope this gives you more insight into the problem...

Give me a call and we can discuss,

Thanks,

Jason

---

**From:** Sheryl Gonsalves [mailto:sheryl@efainc.com]  
**Sent:** Tuesday, November 27, 2007 3:38 PM  
**To:** Jason Mohr  
**Subject:** RE: Phone system down

Any news?

**Eric F. Anderson Inc.**

General Building Contractor  
 Since 1945

**Sheryl Gonsalves**  
 Accounting Manager

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1066 Beecher Street  
 P.O. Box 2076  
 San Leandro, CA 94577  
 direct line: 510.268.6703 direct fax: 510.268.6803  
 tel: 510.430.8404 fax: 510.430.2561  
 email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
 web site: [www.efainc.com](http://www.efainc.com)

---

**From:** Jason Mohr [mailto:jmohr@telekenex.com]  
**Sent:** Tuesday, November 27, 2007 3:29 PM  
**To:** Sheryl Gonsalves; internalsupport  
**Subject:** RE: Phone system down

Sheryl,

I am working on this and I have the e-mail... I will find out what is going on.

Jason.

---

5/30/2008

**From:** Sheryl Gonsalves [mailto:sheryl@efainc.com]  
**Sent:** Tuesday, November 27, 2007 3:24 PM  
**To:** Jason Mohr  
**Subject:** FW: Phone system down  
**Importance:** High

Ooops messed up your name on the last one....

Phone system is still down you can reach me on my cell 510.332.8351

System has been down for 16 min

**Eric F. Anderson Inc.**

General Building Contractor  
*Since 1945*

**Sheryl Gonsalves**  
Accounting Manager

---

1066 Beecher Street  
P.O. Box 2076  
San Leandro, CA 94577  
direct line: 510.268.6703 direct fax: 510.268.6803  
tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

---

**From:** Sheryl Gonsalves  
**Sent:** Tuesday, November 27, 2007 3:18 PM  
**To:** 'support@telekenex.com'  
**Cc:** 'jmhre@telekenex.com'; 'thealy@telekenex.com'  
**Subject:** Phone system down  
**Importance:** High

Our phone system has gone down once again. The time we lost service was at 3:07 pm on Tuesday November 27<sup>th</sup>. As of this time it is still under the configuring.

Please notify me as to why we are going down at least once a week. This needs to be resolved we have been on your phone system now for over a year with this problem never being resolved.

Thanks for your help.

Sheryl

**Eric F. Anderson Inc.**

General Building Contractor  
*Since 1945*

**Sheryl Gonsalves**  
Accounting Manager

---

1066 Beecher Street  
P.O. Box 2076  
San Leandro, CA 94577  
direct line: 510.268.6703 direct fax: 510.268.6803  
tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

**Sheryl Gonsalves**

---

**From:** Sheryl Gonsalves  
**Sent:** Friday, December 14, 2007 5:17 PM  
**To:** 'Jason Mohr'  
**Subject:** RE: Phones down? Are they still down?

They went down for 3-5 min...went into configuration mood like always. At least once a week last time was last Thursday and the time before was Tuesday. To many times to keep track but we do have most of it documented.

**Eric F. Anderson Inc.**

General Building Contractor  
*Since 1945*

**Sheryl Gonsalves**  
Accounting Manager

---

1066 Beecher Street  
P.O. Box 2076  
San Leandro, CA 94577  
direct line: 510.268.6703 direct fax: 510.268.6803  
tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

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**From:** Jason Mohr [<mailto:jmohr@telekenex.com>]  
**Sent:** Friday, December 14, 2007 3:46 PM  
**To:** Sheryl Gonsalves  
**Subject:** Phones down? Are they still down?

Hi Sheryl,

I am checking into it.

What exactly happened?

Jason

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**From:** Sheryl Gonsalves [<mailto:sheryl@efainc.com>]  
**Sent:** Friday, December 14, 2007 3:37 PM  
**To:** Jason Mohr; Telekenex Support  
**Cc:** Juanita Robinson  
**Subject:**

Phone system has gone down again at 3:34

**Eric F. Anderson Inc.**  
General Building Contractor  
*Since 1945*

5/30/2008

**Sheryl Gonsalves**  
Accounting Manager

---

1066 Beecher Street  
P.O. Box 2076  
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web site: [www.efainc.com](http://www.efainc.com)

5/30/2008

**Sheryl Gonsalves**

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**From:** Sheryl Gonsalves  
**Sent:** Wednesday, January 16, 2008 7:40 AM  
**To:** 'support@telekenex.com'  
**Cc:** 'Jason Mohr'  
**Subject:** RE: Order phone for remote location

Well once again you've sent me a remote phone that is not programmed properly to just plug and go. We've already spent a few hundred dollars having our IT person try to configure it and were unsuccessful. You know the phones that were suppose to save us money, time, and frustration.

May I ask once again what we are doing wrong when placing these remote phone orders so we may correct it on our end. We have only had one set of remote phones come to us correctly.

Could you please send me instructions as to what needs to be done to get this phone up and running, so our Superintendent can run his job site efficiently?

Sheryl

**Eric F. Anderson Inc.**

General Building Contractor  
*Since 1945*

**Sheryl Gonsalves**  
Accounting Manager

---

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tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

---

**From:** Sheryl Gonsalves  
**Sent:** Monday, December 17, 2007 4:14 PM  
**To:** 'support@telekenex.com'  
**Cc:** 'Jason Mohr'  
**Subject:** RE: Order phone for remote location

First thank you for this order I just received but a power supply was not included for this remote phone do we not need them anymore or was it just shorted on this order.

Thanks,

Sheryl

**Eric F. Anderson Inc.**

General Building Contractor  
*Since 1945*

**Sheryl Gonsalves**  
Accounting Manager

---

5/30/2008

1066 Beecher Street  
P.O. Box 2076  
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direct line: 510.268.6703 direct fax: 510.268.6803  
tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

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**From:** Sheryl Gonsalves  
**Sent:** Wednesday, December 12, 2007 3:38 PM  
**To:** 'support@telekenex.com'  
**Cc:** 'Jason Mohr'  
**Subject:** Order phone for remote location

I need to place and order.

1-remote phone with power supply, **programmed** for remote location

Set up 1 new user remote programmed  
Chuck Durham  
510 268 6733 phone  
510 268 6833 fax virtual  
[chuck@efainc.com](mailto:chuck@efainc.com) email address

This new user and phone needs to be shipped to our San Leandro office attn: Sheryl Gonsalves  
1066 Beecher Street  
San Leandro, CA 94577

Please confirm when order is shipped or provide via email tracking number.

Please call me if you have any questions.

Thanks

Sheryl

**Eric F. Anderson Inc.**  
General Building Contractor  
*Since 1945*  
**Sheryl Gonsalves**  
Accounting Manager

---

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tel: 510.430.8404 fax: 510.430.2561  
email: [sheryl@efainc.com](mailto:sheryl@efainc.com)  
web site: [www.efainc.com](http://www.efainc.com)

5/30/2008

11/3/07 4:07

11/27/07 3:07

2 hrs

12/4/07 11:30 20 min

12/14/07 3:34 - 3:37 3 min

12/20/07 7:08 AM 1 or 2 min

2/28/08 See phone

Programming error

Bid Dial - Starting

Disconnect.

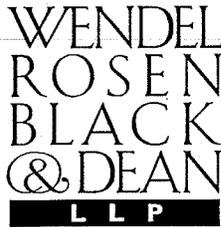
3/3/08 can not transfer

Phone calls direct line

~~19201~~ 19201

  
3/30/08

**EXHIBIT B**



ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
gmurai@wendel.com

June 26, 2008

**VIA OVERNIGHT MAIL**

Anthony Zabit  
**TELEKENEX**  
3221 Twentieth Street  
San Francisco, CA 94110

**Re: Eric F. Anderson, Incorporated/Telekenex**  
Your Account No. 75

Dear Mr. Zabit:

Our law firm represents Eric F. Anderson, Incorporated ("EFA"). EFA is a Telekenex customer. This letter follows my earlier letter to you dated June 3, 2008 as well as my telephone message to you of earlier today.

As discussed in my earlier letter to you, EFA has and continues to experience problems with Telekenex's services including static, dropped calls, and issues related to equipment orders. This has adversely impacted EFA's business. As a result of these ongoing problems, EFA found it necessary to utilize the services of another telecommunications provider, and notified Telekenex that it was canceling its services. Shortly after providing its notice of cancellation, EFA received a notice of termination from Telekenex purporting to assess an early termination fee of \$79,431.75, which prompted my letter to you.

It is my understanding that on June 6, 2008 you had a telephone conversation with Geza Paulovits of EFA wherein you represented that Telekenex would not be assessing a termination fee to EFA and would port EFA's telephone numbers to its new telecommunication provider. It is my further understanding that you told Mr. Paulovits that you would call him the following week to discuss the transition. Mr. Paulovits did not receive a call back from you. More recently, EFA has received another notice of termination from Telekenex, this notice dated June 24, 2008, purporting to assess an early termination fee of \$74,136.30. A copy of this correspondence is enclosed.

Please be advised that Telekenex's refusal to port EFA's telephone numbers is in violation of the Local Number Portability Rules ("LNP Rules") of the Federal Communications Commission ("FCC"). As you know, on October 31, 2007, the FCC expanded its LNP Rules to

Anthony Zabit  
June 26, 2008  
Page 2

WENDEL, ROSEN, BLACK & DEAN LLP

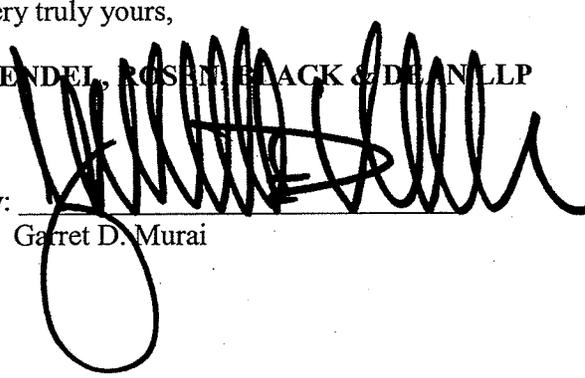
VOIP providers. Those rules require that a telecommunication provider port a customer's telephone numbers even if the customer owes money for an outstanding balance or termination fee. Information on the FCC's LNP Rules are enclosed.

Please be advised that if Telekenex does not port EFA's telephone numbers by **Tuesday, July 1, 2008**, EFA intends to file a complaint against Telekenex with the FCC and will file suit against Telekenex for violation of the FCC's LNP Rules, breach of contract, interference with economic advantage, negligence, and fraud. EFA reserves all rights and remedies it is entitled to under law.

Please contact me, or have Telekenex's attorney contact me, as soon as possible.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

By: 

Garret D. Murai

GDM:cme  
Enclosures  
cc: Geza Paulovits



**June 24, 2008**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

RE: Telekenex Acct # 75

Dear Customer,

Telekenex has received a Notice of Termination of the Master Service Agreement.

Our records indicate that the subject account Agreement has **14** months remaining. Early termination of your Agreement will generate an Early Termination fee of **\$74,136.30**

This letter shall serve as a notice of default for early termination under the Master Service Agreement. Per the terms of your Master Service Agreement you may cure your default by sending us a letter rescinding your cancellation and reaffirming your intent to fulfill the remainder of the term of the contract. Please refer to paragraph 6 of the Master Service Agreement:

In the event of a Customer Default for any reason, Telekenex may: (1) suspend Service to Customer, (2) cease accepting or processing orders for service and/or, (3) terminate this agreement. If this agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination penalties shall apply. Customer agrees to pay Telekenex reasonable expenses (including attorney and collection agency fees) incurred in enforcing Telekenex rights in the event of a Customer Default.

Thank you,

*BS*  
Brad Stasek

Accounts Receivable  
Telekenex, Inc.  
3221 Twentieth Street 3<sup>rd</sup> Floor  
San Francisco, CA. 94110

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)



June 24, 2008

VIA FEDERAL EXPRESS

**Customer Notice of Discontinuance of Service for Non-Payment of Bills**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

Re: Telekenex Acct# 75

Dear CUSTOMER,

You are currently in default of your Master Service Agreement, and as a result Telekenex considers you a credit risk. Payment in the amount of **\$74,136.30** must be received in our office no later than **7/01/2008**. This total reflects two separate amounts.

First, the amount outstanding on your account is now **\$0.00**.

Second, you have incurred **\$74,136.30** Early Termination fees which requires a deposit amount equal to two times the New Charges as shown on your latest Invoice Statement. This is according to the Master Service Agreement (paragraphs 2 & 9) as follows :

2. Payment Terms. Invoices for Services are due and payable in U.S. dollars net (30) thirty. If any invoice is not paid by Past Due Date, Telekenex may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy Telekenex may have under this Agreement and its tariffs, whether at law, or in equity.
  
9. Additional Assurances. If at any time during the term of this Agreement there is a material and adverse change in a Customer's financial condition, which shall be determined by Telekenex in its reasonable discretion, then Telekenex may require a reasonable deposit or increase the amount of an existing Customer deposit by a reasonable amount. If Customer refuses to provide such deposits, Telekenex may seek to terminate this Agreement. In such an event, all unpaid invoice amounts will be due immediately as will early termination and cancellation charges.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TELL FREE 1.888.469.5100 | FAX 1.866.728.1739

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[www.telekenex.com](http://www.telekenex.com)



On 7/01/2008 at 5 p.m. a disconnect order will be submitted to our order cancellation department if payment has not been received by that time. If your service is disconnected, you will be required to pay a deposit equal to two months' usage, in addition to reconnect charges of \$35 per line. Your regulated local phone service will not be disconnected for non-payment of any charges for unregulated telecommunications services that may be included in the amount shown above.

To prevent an interruption in service and to avoid the additional charges please mail your payment today to:

Accounts Receivable  
Telekenex, Inc.  
3221 20th Street, Third Floor  
San Francisco, California 94110

If you believe that the amount now overdue was billed in error, Telekenex will investigate the disputed amount upon written request. If, after investigation and review by Telekenex, there is still disagreement over the amount due, you may appeal the dispute to the Consumer Affairs Branch of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, 1-800-649-7570.

If you have any questions regarding the amount due or wish to make arrangements for payment, please contact your Telekenex representative at (888) 469-5100. If you do not respond prior to the payment deadline we will disconnect service without further notice.

Service Representative  
Telekenex, Inc.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

Delivering Business-Grade IP Solutions  
[www.telekenex.com](http://www.telekenex.com)



# NEWS

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

News Media Information 202-418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.  
See MCI v. FCC, 515 F.2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:  
October 31, 2007

NEWS MEDIA CONTACT:  
Mark Wigfield, 202-418-0253  
Email: [mark.wigfield@fcc.gov](mailto:mark.wigfield@fcc.gov)

## FCC EXPANDS LOCAL NUMBER PORTABILITY TO VoIP

### *Agency Also Streamlines Porting Process for Consumers*

Washington, D.C. – The right of consumers to keep the same, familiar phone number when switching to a new telephone company was expanded today by the Federal Communications Commission, in an Order that will further ensure consumers' opportunity to choose a telephone service provider based on quality, price and service.

The FCC made clear that the obligation to provide local number portability extends to interconnected Voice over Internet Protocol providers and the telecommunications carriers that obtain numbers for them. This action was, in part, a response to numerous complaints by consumers about their inability to port numbers to or from interconnected VoIP providers. The FCC also initiated a Notice of Proposed Rulemaking seeking comment on additional VoIP numbering issues.

The FCC also clarified in its Order that telephone companies may not obstruct or delay number porting by demanding excess information from the customer's new provider, and specifically concluded that LNP validation for a simple number port should be based on no more than four fields: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code, if applicable. In its Notice, the FCC also tentatively concluded that it should require the industry to complete simple ports in 48 hours.

The FCC's Order also ensures that customers of small wireline carriers can port their telephone numbers to wireless carriers. The decision responds to a stay of the Commission's *Intermodal Number Portability Order* by the D.C. Circuit, which required the FCC to analyze the impact of its requirements on small entities under the Regulatory Flexibility Act.

Action by the Commission, October 31, 2007, by Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking (FCC 07-188). Chairman Martin, Commissioners Copps, Tate and McDowell with Commissioner Adelstein approving in part and concurring in part. Separate statements issued by Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell.

Docket Nos.: 07-243, 07-244, 04-36, 95-116, 99-200

Wireline Competition Bureau Staff Contact: Melissa Kirkel at 202-418-7958.

-FCC-

News about the Federal Communications Commission can also be found  
on the Commission's web site [www.fcc.gov](http://www.fcc.gov).

# Wireless Local Number Portability

## FCC Consumer Facts

### Background

For years, consumers with wireline phones have been able to switch from one local carrier to another in the same geographical area without having to change their phone number. Now, this service will be available to wireless phone customers as well.

Under the Federal Communications Commission's (FCC's) wireless "local number portability" (LNP) rules, you can switch wireless carriers and keep your existing phone number within the same local geographical area where it is currently assigned. In addition to switching from one wireless carrier to another, in some cases, you will be able to switch from a wireline carrier to a wireless carrier, or from a wireless carrier to a wireline carrier and still keep your phone number.\*

### Timeline for Wireless LNP

On **November 24, 2003**, wireless carriers in the **top 100 Metropolitan Statistical Areas (MSAs)** must implement this program. MSAs are geographic designations of population centers compiled by the U.S. Census Bureau (see attached map of the top 100 MSAs).

### Implementing Wireless LNP Outside the Top 100 MSAs

Outside of the top 100 MSAs, one of two guidelines applies, whichever is later:

- Wireless carriers must be capable of implementing wireless LNP **six months after receiving a request from the customer's prospective new carrier;**  
- or -
- Wireless carriers must be capable of implementing wireless LNP **six months after November 24, 2003.**

*Note:* When switching carriers you will be able to port your number **within the same metropolitan area**, but you may not be able to port it from one metropolitan area to another.

### Fees and Charges

- Carriers are allowed to charge a fee to departing customers to recover their legitimate costs, but cannot impose fees in excess of their "porting" costs.
- Different carriers may charge different amounts due to varying operating costs.
- Additionally, some carriers may choose to pay the old carrier's costs of porting for the benefit of their new customers. Ask your new carrier whether it has a policy of paying or reimbursing these charges.

### Initiating the Process

- If you want to change carriers contact the prospective **new** carrier, who will start the process of porting by contacting your current carrier.
- You may request service from a new carrier at any time.
- Do not terminate your service with **your existing carrier** before initiating service with the prospective new carrier.

Be aware that you are obligated to pay any early **termination fees** that you may have under your existing contract and any outstanding balance owed to your old carrier. Review your existing contract to determine

(More)  
→



what fees or charges apply. However, once you request service from the new carrier, your old carrier may not refuse to port your number, even if you owe money for an outstanding balance or termination fee.

### The Adjustment Period

Your new carrier can usually give you a good idea about how long the process will take. In general:

- For a **wireless-to-wireless** transfer, your phone number should work within a few hours of your request to change wireless providers.
- A **wireline-to-wireless** transfer may take several business days to complete. Ask the wireless carrier you are switching to whether you will be able to continue using your current wireline number during the transfer process.

*\* Consumers interested in switching a number from a wireline to a wireless phone should check with a prospective new carrier to see if that is an option.*

- If you port from a **wireline phone to a wireless phone**, your wireline long distance carrier **will not** move with you. Your long distance service will generally be provided by your new wireless carrier, but you should verify this with the wireless carrier before changing service providers.

*Note:* For wireline-to-wireless porting, there may be a period of "mixed service" when you essentially have two telephones with the same number.

(More)  
→

### Emergency Services

In some areas, 911 operators automatically receive the phone number or location of a wireless call, but in many areas, that is not the case. Technology that will provide that information – Enhanced 911 or "E911" – is currently being implemented, but is not yet available using many wireless phones and in most parts of the country.

As noted above, during the porting process from the old carrier to the new carrier, there may be a period of "mixed service" - when you may have two telephones with the same number. During this time period, your E911 service may be affected: the call should go through, but, the 911 operator may not be able to call you back if the call gets disconnected. For this reason, before porting either a wireless or a wireline number, ask the new service provider how long the porting process will take and how the porting process will affect a call to 911 services.

### Handsets and Special Services

In some instances, wireless **handsets** among different wireless service providers are incompatible. If you switch wireless service providers, you may need to purchase a new phone, even if you retain the same phone number. If you have concerns about purchasing a new phone ask your prospective new carrier whether or not your current phone will work with that carrier's network.

Also, be aware that in a few areas, as you roam, consumers with ported numbers may only be able to send and receive calls; other services, such as caller ID, may not function properly.

For additional information on wireless LNP, contact the FCC's Consumer Center toll-free at:  
1-888-CALL-FCC (1-888-225-5322) voice,  
1-888-TELL-FCC (1-888-835-5322) TTY, or  
visit our Web site at [www.wireless.fcc.gov/](http://www.wireless.fcc.gov/).



*For this or any other consumer publication in an accessible format (electronic ASCII text, Braille, large print, or audio) please write or call us at the address or phone number below, or send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov).*

*To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on [www.fcc.gov/cgb/emailservic.html](http://www.fcc.gov/cgb/emailservic.html).*

*This document is for consumer education purposes only and is not intended to affect any proceeding or cases involving this subject matter or related issues.*

031103



# EXHIBIT 15

ORIGINAL FILED

08 JUL -9 PM 2:26

E-filing  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MHP

1 Donald S. Simon (Bar No. 189992)  
2 Garret D. Murai (Bar No. 215667)  
3 **WENDEL, ROSEN, BLACK & DEAN LLP**  
4 1111 Broadway, 24th Floor  
5 Oakland, CA 94607-4036  
6 Telephone: (510) 834-6600  
7 Facsimile: (510) 834-1928  
8 Email: gmurai@wendel.com

9 Attorneys for Plaintiff  
10 ERIC F. ANDERSON, INCORPORATED

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 CV 08 3319

14 ERIC F. ANDERSON, INCORPORATED,  
15 a California corporation,

Case No.

16 Plaintiff,

17 **DECLARATION OF GEZA PAULOVITS  
18 IN SUPPORT OF EX PARTE MOTION  
19 FOR TEMPORARY RESTRAINING  
20 ORDER AND ORDER TO SHOW CAUSE  
21 RE PRELIMINARY INJUNCTION**

22 vs.

23 TELEKENEX, INC., a Delaware  
24 corporation; and DOES 1 through 10,  
25 inclusive,

26 **Date:  
27 Time:  
28 Department:  
Judge:**

Defendants.

19 I, Geza Paulovits, declare:

20 1. I am the Chief Financial Officer of Plaintiff ERIC F. ANDERSON,  
21 INCORPORATED ("EFA"). This declaration is made in support of EFA's Ex Parte Motion for  
22 Temporary Restraining Order and Order to Show Cause Re. Preliminary Injunction.

23 2. I have personal knowledge of the matters stated herein and if called upon to testify  
24 could and would competently do so.

25 3. EFA is a licensed contractor that has been in business for over sixty years. EFA's  
26 business, which frequently requires that it field calls from owners, subcontractors, materialmen,  
27 and others at project worksites where there is no computer access, necessitates that EFA have  
28 quality, reliable telephone service.

Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607-4036

1           4.       On or about April 9, 2006, EFA entered into a Master Service Agreement with  
2 Defendant TELEKENEX, INC. (“Telekenex”) for voice over internet protocol (“VOIP”)  
3 telephony service (“Agreement”). A true and correct copy of the Agreement, which I signed, is  
4 attached hereto as Exhibit A. EFA transferred its telephone service to Telekenex in part because,  
5 as Telekenex promises on its website, it delivers “reliable voice products that will keep your  
6 communication lines open. We offer the highest quality service with exceptional rates.”

7           5.       Since entering into the Agreement, EFA has and continues to experience  
8 reoccurring problems with Telekenex’s services including static, dropped calls, and issues related  
9 to equipment orders. Although EFA has not kept records of each occasion in which it has  
10 experienced problems with Telekenex’s services, emails from EFA to Telekenex wherein it has  
11 notified Telekenex of problems with Telekenex’s services date at least as far back as December  
12 2006. Copies of some of those emails are attached to the June 3, 2008 letter prepared by Garret  
13 Murai and attached as Exhibit A to his declaration.

14           6.       In or about May 2008, I notified Telekenex that EFA would be terminating  
15 Telekenex’s services and requested that Telekenex “port” EFA’s telephone numbers to its new  
16 telecommunication provider.

17           7.       On or about May 28, 2008, I received a “Customer Notice of Discontinuance of  
18 Service for Non-Payment of Bills” from Telekenex. A true and correct copy of the notice is  
19 attached hereto as Exhibit B. The notice states that EFA’s account is paid in full and that “the  
20 amount outstanding on your account is now \$0.00.” However, it also states that an early  
21 termination fee is being charged in the amount of \$79,431.75. The notice further provides that  
22 Telekenex will investigate disputed amounts upon written request.

23           8.       That same day, I received a letter from Telekenex stating that EFA was being  
24 charged an early termination fee in the amount of \$79,431.75. A true and correct copy of the  
25 letter is attached hereto as Exhibit C. The letter quotes, in part only, paragraph 6 of the  
26 Agreement.

27           9.       In or about June 2008, I telephoned Anthony Zabit, President and Chief Operating  
28 Officer of Telekenex. During our telephone conversation, Mr. Zabit apologized for the service

Wendel, Rosen, Black & Dean, LLP  
111 Broadway, 24th Floor  
Oakland, CA 94607-4036

1 problems experienced by EFA, stated that Telekenex was "not going to hold [EFA] hostage," and  
2 indicated that he would call me the following week about porting EFA's telephone numbers. Mr.  
3 Zabit never called me back.

4 10. On or about June 24, 2008, I received a second "Customer Notice of  
5 Discontinuance of Service for Non-Payment of Bills" from Telekenex. A true and correct copy  
6 of the notice is attached hereto as Exhibit D. Like Telekenex's May 28 notice, the notice states  
7 that EFA's account is paid in full. However, it also states that an early termination fee is being  
8 charged, this time in the amount of \$74,136.30. Also like Telekenex's May 28 notice, the notice  
9 provides that Telekenex will investigate disputed amounts upon written request.

10 11. That same day, I received a second letter from Telekenex stating that EFA was  
11 being charged an early termination fee in the amount of \$74,136.30. A true and correct copy of  
12 the letter is attached hereto as Exhibit E. Like Telekenex's May 28 letter, the letter quotes, in part  
13 only, paragraph 6 of the Agreement.

14 12. On July 8, 2008, at approximately 12:00 p.m., EFA discovered that its telephones  
15 had been disconnected by Telekenex. No calls could be placed to or from EFA's telephones.  
16 EFA contacted Telekenex about the problem and received an email from Bob Finley, Chief  
17 Financial Officer of Telekenex, informing EFA that Telekenex was "disconnecting your phones  
18 for non-payment. . . . Since you decided not to pay, your phones will temporarily [be]  
19 disconnected until we receive payment." A true and correct copy of the email is attached hereto  
20 as Exhibit F.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is  
22 true and correct.

23 Executed this 9th day of July 2008 in San Leandro, California.

24  
25  
26   
27 Geza Paulovits  
28

**EXHIBIT A**

## Master Service Agreement

Terms & Conditions

1. **Scope.** Telekenex agrees to provide Customer the services found in the attached Supplements to this Master Service Agreement ("Agreement"). All services will be provided consistent with Telekenex's effective state and federal tariffs. Customer agrees to pay for these services and abide by all terms contained in this Agreement and Telekenex tariffs. This Agreement is subject to credit approval by Telekenex in its sole discretion.
2. **Payment Terms.** Invoices for Services are due and payable in U.S. dollars upon receipt. If any invoice is not paid by Past Due Date, Telekenex may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy Telekenex may have under this Agreement and its tariffs, whether at law, or in equity.
3. **Billing Disputes.** If Customer in good faith disputes any portion of any Telekenex invoice, Customer shall submit to Telekenex, full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. Billing disputes will be resolved in accordance with Telekenex's tariffs.
4. **Effective Date.** The effective date of each Supplement shall be the first day of the calendar month in which service and billing commence.
5. **Notices.** All notices and other communications hereunder, including notices of breach of this Agreement, shall be in writing and shall be deemed to have been duly given as the date of delivery or confirmed facsimile transmission. If mailed, notice shall be sent first-class postage prepaid, certified or registered mail, return receipt requested and becomes effective upon confirmed delivery. Notices will be delivered or sent to the parties' respective addresses set forth on the signature page of this Agreement to the attention of the following persons:
 

If to Telekenex: Attention:	Contract Administration
If to Customer: Attention:	<u>SEVA FACILITY</u>
6. **Events of Default.** A "Default" shall occur if (a) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for five (5) calendar days after written notice from Telekenex, or (b) either party fails to perform or observe any material term or obligation (other than making payment) contained in this Agreement, and any such failure remains uncorrected for thirty (30) calendar days after written notice from the non-defaulting party informing the defaulting party of such failure. If Customer uses the Services for any unlawful purpose or in any unlawful manner, Telekenex shall have the right to immediately suspend and/or terminate any or all Services hereunder without notice to Customer.
 

In the event of a Customer Default for any reason, Telekenex may: (i) suspend Service to Customer; (ii) cease accepting or processing orders for Services and/or; (iii) terminate this Agreement. If this Agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination penalties shall apply. Customer agrees to pay Telekenex's reasonable expenses (including attorney and collection agency fees) incurred in enforcing Telekenex's rights in the event of a Customer Default.

In the event of a Telekenex Default, Customer may terminate this Agreement without penalty. Customer will, however, remain liable for all charges incurred for Services provided prior to Customer's termination of this Agreement.
7. **Term.** This Agreement defines the Term of each Supplement, which shall be three (3) years from the Effective Date of each Supplement ("Initial Term"). Each Supplement will be automatically renewed for an equivalent Term ("Renewal Term") upon expiration of the Initial Term or the immediately preceding Renewal Term, unless (i) earlier terminated; or (ii) written notice has been given by either party at least sixty (60) days prior to the end of the then current Term, that such party does not consent to renewal. "Term" shall mean the "Initial Term" and all "Renewal Terms" collectively.
8. **Certifications.** Customer hereby represents and warrants that it is certified to do business in all jurisdictions in which it will be utilizing Telekenex's services.
9. **Additional Assurances.** If at any time during the term of this Agreement there is a material and adverse change in a Customer's financial condition, which shall be determined by Telekenex in its sole discretion, then Telekenex may require a deposit or increase the amount of an existing Customer deposit. If Customer refuses to provide such deposits, Telekenex may seek to terminate this Agreement. In such an event, all unpaid invoice amounts will be due immediately as well as early termination and cancellation charges.
10. **Bankruptcy.** In the event of the bankruptcy or insolvency of either party or if either party shall make any assignment for the benefit of creditors or take advantage of any act or law for relief of debtors, the other party to this Agreement shall have the right to terminate this Agreement without further obligation or liability on its part.
11. **Assignment.** Customer may not assign this Agreement without the express written consent of Telekenex, which consent shall not be unreasonably withheld.
12. **Waiver of Breach or Violation not Deemed Continuing.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
13. **Regulatory.** Customer is responsible for reimbursement to Telekenex for any fees, taxes, or surcharges paid by Telekenex that are imposed or authorized by regulatory and governmental entities.
14. **Business Relationship.** This Agreement shall not create any agency, employment, joint venture, partnership, representation, or fiduciary relationship between the parties. Neither party shall have the authority to, nor shall any party attempt to, create any obligation on behalf of the other party.
15. **System Maintenance.** In the event Telekenex determines that it is necessary to interrupt Service or that there is a potential for Services to be interrupted for the performance of system maintenance, Telekenex will use good faith efforts to notify Customer prior to the performance of such maintenance. In no event shall interruption for system maintenance constitute a failure of performance by Telekenex.

16. **Limitation of Liability.** Telekenex's liability arising out of the provision of Services, delays in the restoration of services to be provided under this Agreement or any other telecommunication service, or arising out of mistakes, accidents, omissions, interruptions, errors or defects in transmission, or delays caused by judicial or regulatory authorities, shall be subject to the terms of its tariffs. For purposes of this Section, the term "Telekenex" shall be deemed to include Telekenex, its affiliates, shareholders, directors, officers and employees, and any person or entity assisting Telekenex in its performance pursuant to this Agreement.
17. **Force Majeure.** Telekenex shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to: acts of God, fire, explosion, vandalism, cable cut, problems within RBOC or ILEC networks, flood, storm, or other similar catastrophe; any law, order, regulation, direction, action or request of the United States government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments; or of any civil or military authority; national emergencies; insurrections; riots; terrorist actions; wars; or strikes, lock outs, or work stoppages.
18. **Underutilization and Early Termination Charges.** Underutilization Charges: Monthly Volume Commitment ("MVC") apply. MVC is defined as the average of the third and fourth month invoice from the effective date of each Supplement. If at the end of any month, Customer's service-usage charges fail to meet or exceed the MVCs, Customer shall pay, in addition to all other charges under this Agreement, the difference between the MVC and Customer's services and usage charges during such month.  
  
Early Termination Charges: Early termination charges apply if, 1) Customer terminates this Agreement prior to the expiration of any Term, for reasons other than for "Cause" (as defined below); or 2) Telekenex terminates this Agreement for Cause, Customer will be required to pay, in addition to all accrued but unpaid charges through the date of such termination, the amount obtained by multiplying the individual MVCs by the remaining number of months left in each respective term. As used herein, "Cause" shall mean a failure of the other party to perform a material obligation under this Agreement which failure is not remedied by the defaulting party within thirty (30) days of written notice thereof.
19. **Legal Construction.** In the event one or more of the provisions contained in this Agreement shall, for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
20. **Survival.** The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due, confidentiality, liability, and indemnification shall survive any termination of this Agreement. The rights and obligations under this Agreement shall survive any merger or sale of either party and shall be binding upon the successors and permitted assigns.
21. **Amendments/Riders.** This Agreement may only be modified or supplemented by an instrument in writing executed by each party.
22. **Governing Law.** This Agreement is deemed to be entered into in the State of California and shall not become a binding obligation of Telekenex until it has been executed by an officer of Telekenex. The parties agree that any dispute arising under this Agreement shall be governed by and construed in accordance with the laws of the State of California and both parties agree to the jurisdiction of California state and federal courts. This Agreement is also subject to, and Customer agrees to comply with, all local laws, and regulations, rulings, and orders of local, state and federal governmental agencies, including but not limited to the Communications Act of 1934, the Telecommunications Act of 1996, and rules and regulations of the Federal Communications Commission and California Public Utilities Commission.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the date signed below.

**CUSTOMER**

Eric F. Anderson  
1066 Beecher Street  
San Leandro, CA 94577-0207

**TELEKENEX**

3221 20<sup>th</sup> Street  
San Francisco, CA 94110

By: [Signature]  
Name: Eric Paulovis  
Title: Trans + net  
Date: 8/9/06

By: [Signature]  
Name: Anthony Zakh  
Title: CFD  
Date: 8/9/06

**Telekenex Broadband Services Supplement**  
*Hosted IP Telephony Service*

- Scope:** Telekenex shall use its best efforts to provide Hosted IP Telephony Service ("Broadband Service") in accordance with Telekenex's Service Level Agreement (SLA) and tariffs, which can be accessed at [www.telekenex.com](http://www.telekenex.com). Services provided under this Broadband Services Supplement are subject to the Master Services Agreement, as well as all terms, conditions, and rates contained in Telekenex's tariffs as may be changed periodically. In the event of a conflict between the Terms and Conditions of the Master Services Agreement and this Supplement, this Supplement shall take precedence for specific services covered herein.
- Customer Use of the Services:** All use of the Hosted IP Telephony Service and Telekenex's network shall comply with the Telekenex Acceptable Use Policy, Service, software, and equipment policies (collectively "Policies"), which are posted on Telekenex's web site at [www.telekenex.com/legal](http://www.telekenex.com/legal) and which is made a part of this Supplement. Telekenex reserves the right to amend Policies effective upon posting to the web site or other notice to Customer. Customer agrees to defend, indemnify and hold harmless Telekenex, its affiliates, and contractors from any and all liabilities, costs and expenses, including reasonable attorney's fees, arising from or related to use of the Broadband Service by Customer or Customer's Users. For purposes of this Supplement, "Customer Users" shall refer to customers of Customer or any other third parties who utilize or access the Broadband Service or the Telekenex network pursuant this Supplement. In addition to "Cause" as defined in the Agreement, Cause shall also include the violation of the Policies or conduct that Telekenex, in its reasonable discretion, believes may subject Telekenex to civil or criminal litigation or liability, charges and/or damages.  
If Telekenex has suspended the Broadband Service pursuant to this Section, Telekenex may require a reinitiation fee in order to resume Broadband Service.
- Rates:** The rates for Broadband Services are set forth below, in accordance with current tariffs on file. Such rates apply to Service subject to availability. Estimated charges for this service amount to:

San Leandro, CA

Qty.	USOC	Description	Installation Rate (*)	Monthly Rate (*)
25	STAWVOIS	Office Stations	\$ 700.00	\$ 700.00
10	REMWVOIS	Remote Station	\$ 280.00	\$ 280.00
5	COMMSTAT	Common Area Station	\$ 95.00	\$ 95.00
0	CONESTAT	Conference Station	\$ -	\$ -
0	ADVCONF	Advanced Conference Station	\$ -	\$ -
0	ADDSTAT	Extra Station	\$ -	\$ -
40	CISIPINF	Cisco IP Phones & Core Infrastructure	\$ 760.00	\$ 760.00
0	EXTCORE	Extra Cisco Core Infrastructure	\$ -	\$ -
0	EXPWRS	Extra Power Supply Phones	\$ -	\$ -
0	SITEFEE	Site Fee	\$ -	\$ -
0	VIRSTAVO	Virtual Stations	\$ -	\$ -
0	WIRSTAT	Wireless Station	\$ -	\$ -
0	WIRCLAS	Wireless Classic Phone	\$ -	\$ -
0	WIR2WAY	Wireless 2-Way Phone	\$ -	\$ -
0	WIRSITE	Wireless Site Fee	\$ -	\$ -
0	WIRACCP	Wireless Access Points	\$ -	\$ -
1	STAUTATT	Auto-Attendant Standard	\$ 150.00	\$ -
0	CUAUTATT	Auto-Attendant Custom	\$ -	\$ -
1	AUTLEAD	Auto-Attendant Lead Number	\$ 30.00	\$ 30.00
0	CMCHD50	Custom Music on Hold -50	\$ -	\$ -
0	CMCHD100	Custom Music on Hold -100	\$ -	\$ -
0	REC7614	Receptionist Console - Cisco 7614	\$ -	\$ -
1	SOFTCONS	Receptionist Console - Soft Single Lic	\$ 25.00	\$ 25.00
0	ACDQUE	ACD Queue	\$ -	\$ -
0	ACDAGENT	ACD Agents	\$ -	\$ -
0	HUNT	Hunt Group Setup	\$ -	\$ -
0	HUNTMEM	Hunt Group Members	\$ -	\$ -
0	PICKGR	Pickup Group Setup	\$ -	\$ -
0	PICKMEM	Pickup Group Member	\$ -	\$ -
0	GRLEAD	ACD/Hunt Group Lead Number	\$ -	\$ -
0	VMBOX	Voice Mail Only	\$ -	\$ -
0	NUMPWD	Forward Only Number	\$ -	\$ -
0	EXXNUM	Toll Free Number	\$ -	\$ -
0	VIRTFAX	Virtual Fax Number	\$ -	\$ -
1	DSIPT	DS1 Access	\$ 400.00	\$ 300.00
0	ISPTI	Internet Service - ISP	\$ -	\$ -
1	PNWAN	Private Network - WAN incl. Hosted Firewall	\$ 300.00	\$ 195.00
0	DSHINT	DS1 Access & Port: Internet T1 ONLY	\$ -	\$ -
0	DSIPTRED	DS1 Access: Redundant Alternate POP	\$ -	\$ -
0	VIRSPAM	Email Virus/Spam Scanning	\$ -	\$ -
0	IPUPG	IP Addresses Upgrade	\$ -	\$ -
0	ACCTCODE	Account Codes	\$ -	\$ -
0	RESNUM25	Block of 25 Number Reservation	\$ -	\$ -
0	EXPINST	Expedited Install	\$ -	\$ -
<b>Totals</b>			<b>\$ 2,740.00</b>	<b>\$ 2,385.00</b>

\*Plus applicable taxes and surcharges.

4. **Rates:** The rates Telekenex agrees to provide the Customer with the following California outgoing per minute domestic rates, subject to its duly filed tariffs:

All Domestic Cal 0.029

5. **Monthly Charges:** Customer shall be invoiced monthly for (i) the monthly charges (prorated for any partial month) based on the applicable rates, and (ii) the charges for other services received. The first invoice shall be for the first two months (prorated for any partial month) and any applicable one-time (non-recurring charges); each invoice thereafter shall be for the following month.

6. **Billing Commencement:** Billing commencement will not be delayed if a performance failure is due to failure caused by equipment or systems provided by Customer or Customer's inability to install such equipment or systems prior to Circuit readiness.

7. **Service Address:** Customer Service Address for services detailed in this Supplement is as follows:

510430  
1066 Beecher Street  
San Leandro, CA  
94577-0207

Telekenex Letter Of Agency

The undersigned company/individual hereby appoints Telekenex as its telecommunications agent, to act in company's/individual's name and stead, in obtaining any and all information requested from our local exchange telephone company and our long distance carrier for the purpose of ordering changes to specific telecommunications services provided to the undersigned, including without limitation, removing, adding to, or rearranging such telecommunications service including changing the responsible organization on our/my 800/RSR service as reflected on this service agreement or any related service agreements signed by Telekenex which are necessary for the fulfillment of services requested on this application.

My Local Exchange Carrier (LEC) is authorized to make pertinent information available to Telekenex as its/my agent for this purpose and to follow Agent's instructions with reference to any order or change to in-state or out of state long distance services which the LEC provides to the undersigned, and hereby releases LEC from any liability for doing so unless said information is negligently or recklessly supplied and harm results to the undersigned. I/We have been made aware that our local exchange carrier may charge a small fee in association with this change to our long distance carrier, which will be reflected on our/my local telephone bill when these changes take place. This LOA shall remain in affect until such time as the undersigned notifies Telekenex in writing 30 days prior to termination.

CUSTOMER  
Eric F. Anderson  
1066 Beecher Street  
San Leandro, CA 94577-0207

TELEKENEX  
3221 20<sup>th</sup> Street  
San Francisco, CA 94110

By:   
Name: Gena Paulovits  
Title: Treasurer  
Date: 2-9-04

By:   
Name: Anthony Zales  
Title: CFO  
Date: 2/9/04

**Telekenex Broadband Services Supplement**  
*Hosted IP Telephony Service*

- Scope:** Telekenex shall use its best efforts to provide Hosted IP Telephony Service ("Broadband Service") in accordance with Telekenex's Service Level Agreement (SLA) and tariffs, which can be accessed at [www.telekenex.com](http://www.telekenex.com). Services provided under this Broadband Services Supplement are subject to the Master Services Agreement, as well as all terms, conditions, and rates contained in Telekenex's tariffs as may be changed periodically. In the event of a conflict between the Terms and Conditions of the Master Services Agreement and this Supplement, this Supplement shall take precedence for specific services covered herein.
- Customer Use of the Services:** All use of the Hosted IP Telephony Service and Telekenex's network shall comply with the Telekenex Acceptable Use Policy, Service, software, and equipment policies (collectively "Policies"), which are posted on Telekenex's web site at [www.telekenex.com/legal](http://www.telekenex.com/legal) and which is made a part of this Supplement. Telekenex reserves the right to amend Policies effective upon posting to the web site or other notice to Customer. Customer agrees to defend, indemnify and hold harmless Telekenex, its affiliates, and contractors from any and all liabilities, costs and expenses, including reasonable attorney's fees, arising from or related to use of the Broadband Service by Customer or Customer's Users. For purposes of this Supplement, "Customer Users" shall refer to customers of Customer or any other third parties who utilize or access the Broadband Service or the Telekenex network pursuant to this Supplement. In addition to "Cause" as defined in the Agreement, Cause shall also include the violation of the Policies or conduct that Telekenex, in its reasonable discretion, believes may subject Telekenex to civil or criminal litigation or liability, charges and/or damages. If Telekenex has suspended the Broadband Service pursuant to this Section, Telekenex may require a reinitiation fee in order to resume Broadband Service.
- Rates:** The rates for Broadband Services are set forth below, in accordance with current tariffs on file. Such rates apply to Service subject to availability. Estimated charges for this service amount to:

Sacramento

Qty	USOC	Description	Installation Rate (*)	Monthly Rate (*)
13	STAWVOIS	Office Stations	\$ 564.00	\$ 364.00
0	REMWVOIS	Remote Station	\$ -	\$ -
0	COMMSTAT	Common Area Station	\$ -	\$ -
0	CONFSTAT	Conference Station	\$ -	\$ -
0	ADVCONF	Advanced Conference Station	\$ -	\$ -
0	ADDSTAT	Extra Station	\$ -	\$ -
15	CISIPINE	Cisco IP Phones & Core Infrastructure	\$ 247.00	\$ 247.00
0	EXTCORE	Extra Cisco Core Infrastructure	\$ -	\$ -
0	EXPWRS	Extra Power Supply- Phones	\$ -	\$ -
0	SITEFEE	Site Fee	\$ -	\$ -
0	VIRSTAVO	Virtual Stations	\$ -	\$ -
0	WIRSTAT	Wireless Station	\$ -	\$ -
0	WIRCLAS	Wireless Classic Phone	\$ -	\$ -
0	WIR2WAY	Wireless 2-Way Phone	\$ -	\$ -
0	WIRSITE	Wireless Site Fee	\$ -	\$ -
0	WIRACCP	Wireless Access Points	\$ -	\$ -
0	STAUTATT	Auto-Attendant-Standard	\$ -	\$ -
0	CUAUTATT	Auto-Attendant- Custom	\$ -	\$ -
0	AUTLEAD	Auto-Attendant Lead Number	\$ -	\$ -
0	REC7614	Receptionist Console: Cisco 7614	\$ -	\$ -
1	SOFTCONS	Receptionist Console: Soft Single Lic	\$ 25.00	\$ 25.00
0	ACDQUE	ACD: Queue Setup	\$ -	\$ -
0	ACDAGENT	ACD: Agents	\$ -	\$ -
0	HUNT	Hunt Group: Setup	\$ -	\$ -
0	HUNTMEM	Hunt Group: Members	\$ -	\$ -
0	PICKGR	Pickup Group: Setup	\$ -	\$ -
0	PICKMEM	Pickup Group: Member	\$ -	\$ -
0	VIRTEAX	Virtual Fax Number	\$ -	\$ -
1	DSIPT	DS1 Access	\$ 400.00	\$ 275.00
0	ISPTI	Internet Service - ISP	\$ -	\$ -
1	PNWAN	Private Network: WAN incl. Hosted Firewall	\$ 300.00	\$ 195.00
0	DSINT	DS1 Access & Port: Internet T1 ONLY	\$ -	\$ -
0	EXPINST	Expedited Install	\$ -	\$ -
<b>Totals</b>			<b>\$ 1,336.00</b>	<b>\$ 1,106.00</b>

\*Plus applicable taxes and surcharges.

Initials:                     

*[Handwritten Signature]*

4. Rates: The rates Telekenex agrees to provide the Customer with the following California outgoing per minute domestic rates, subject to its duly filed tariffs:

All Domestic Cal 6.029

5. Monthly Charges: Customer shall be invoiced monthly for (i) the monthly charges (prorated for any partial month) based on the applicable rates, and (ii) the charges for other services received. The first invoice shall be for the first two months (prorated for any partial month) and any applicable one-time (non-recurring charges); each invoice thereafter shall be for the following month.

5. Monthly Charges: Customer shall be invoiced monthly for (i) the monthly charges (prorated for any partial month) based on the applicable rates, and (ii) the charges for other services received. The first invoice shall be for the first two months (prorated for any partial month) and any applicable one-time (non-recurring charges); each invoice thereafter shall be for the following month.

6. Billing Commencement: Billing commencement will not be delayed if a performance failure is due to failure caused by equipment or systems provided by Customer or Customer's inability to install such equipment or systems prior to Circuit readiness.

7. Service Address: Customer Service Address for services detailed in this Supplement is as follows:

916648  
 \_\_\_\_\_  
 1501 Silica  
 \_\_\_\_\_  
 Sacramento  
 \_\_\_\_\_  
 95815  
 \_\_\_\_\_

Telekenex Letter Of Agency

The undersigned company/individual hereby appoints Telekenex as its telecommunications agent, to act in company's/individual's name and stead, in obtaining any and all information requested from our local exchange telephone company and our long distance carrier for the purpose of ordering changes to specific telecommunications services provided to the undersigned, including without limitation, removing, adding to, or rearranging such telecommunications service including changing the responsible organization on our 800/888 service as reflected on this service agreement or any related service agreements signed by Telekenex which are necessary for the fulfillment of services requested on this application.

My Local Exchange Carrier (LEC) is authorized to make pertinent information available to Telekenex as its/my agent for this purpose and to follow Agent's instructions with reference to any order or change to in-state or out of state long distance services which the LEC provides to the undersigned, and hereby releases LEC from any liability for doing so unless said information is negligently or recklessly supplied and harm results to the undersigned. I/We have been made aware that our local exchange carrier may charge a small fee in association with this change to our long distance carrier which will be reflected on our my local telephone bill when these changes take place. This LOA shall remain in affect until such time as the undersigned notifies Telekenex in writing 30 days prior to termination.

**CUSTOMER**

Eric F. Anderson  
 1066 Beecher Street  
 San Leandro, CA 94577-0207

**TELEKENEX**

3221 20<sup>th</sup> Street  
 San Francisco, CA 94110

By: [Signature]  
 Name: Eric Anderson  
 Title: President  
 Date: 8-9-06

By: [Signature]  
 Name: Anthony Zuber  
 Title: CFO  
 Date: 8/9/06

**EXHIBIT B**



May 28, 2008

VIA FEDERAL EXPRESS

**Customer Notice of Discontinuance of Service for Non-Payment of Bills**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

Re: Telekenex Acct# 75

Dear CUSTOMER,

You are currently in default of your Master Service Agreement, and as a result Telekenex considers you a credit risk. Payment in the amount of **\$79,431.75** must be received in our office no later than **6/05/2008**. This total reflects two separate amounts.

First, the amount outstanding on your account is now **\$0.00**.

Second, you have incurred **\$79,431.75** Early Termination fees which requires a deposit amount equal to two times the New Charges as shown on your latest Invoice Statement. This is according to the Master Service Agreement (paragraphs 2 & 9) as follows :

2. Payment Terms. Invoices for Services are due and payable in U.S. dollars net (30) thirty. If any invoice is not paid by Past Due Date, Telekenex may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy Telekenex may have under this Agreement and its tariffs, whether at law, or in equity.
  
9. Additional Assurances. If at any time during the term of this Agreement there is a material and adverse change in a Customer's financial condition, which shall be determined by Telekenex in its reasonable discretion, then Telekenex may require a reasonable deposit or increase the amount of an existing Customer deposit by a reasonable amount. If Customer refuses to provide such deposits, Telekenex may seek to terminate this Agreement. In such an event, all unpaid invoice amounts will be due immediately as will early termination and cancellation charges.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLLFREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)



On 6/05/2008 at 5 p.m. a disconnect order will be submitted to our order cancellation department if payment has not been received by that time. If your service is disconnected, you will be required to pay a deposit equal to two months' usage, in addition to reconnect charges of \$35 per line. Your regulated local phone service will not be disconnected for non-payment of any charges for unregulated telecommunications services that may be included in the amount shown above.

To prevent an interruption in service and to avoid the additional charges please mail your payment today to:

Accounts Receivable  
Telekenex, Inc.  
3221 20th Street, Third Floor  
San Francisco, California 94110

If you believe that the amount now overdue was billed in error, Telekenex will investigate the disputed amount upon written request. If, after investigation and review by Telekenex, there is still disagreement over the amount due, you may appeal the dispute to the Consumer Affairs Branch of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, 1-800-649-7570.

If you have any questions regarding the amount due or wish to make arrangements for payment, please contact your Telekenex representative at (888) 469-5100. If you do not respond prior to the payment deadline we will disconnect service without further notice.

Service Representative  
Telekenex, Inc.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)

**EXHIBIT C**



**May 28, 2008**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

RE: Telekenex Acct # 75

Dear Customer,

Telekenex has received a Notice of Termination of the Master Service Agreement.

Our records indicate that the subject account Agreement has 15 months remaining. Early termination of your Agreement will generate an Early Termination fee of **\$79,431.75**

This letter shall serve as a notice of default for early termination under the Master Service Agreement. Per the terms of your Master Service Agreement you may cure your default by sending us a letter rescinding your cancellation and reaffirming your intent to fulfill the remainder of the term of the contract. Please refer to paragraph 6 of the Master Service Agreement:

In the event of a Customer Default for any reason, Telekenex may: (1) suspend Service to Customer, (2) cease accepting or processing orders for service and/or, (3) terminate this agreement. If this agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination penalties shall apply. Customer agrees to pay Telekenex reasonable expenses (including attorney and collection agency fees) incurred in enforcing Telekenex rights in the event of a Customer Default.

Thank you,

Brad Stasek

Accounts Receivable  
Telekenex, Inc.  
3221 Twentieth Street 3<sup>rd</sup> Floor  
San Francisco, CA 94110

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)

**EXHIBIT D**



June 24, 2008

VIA FEDERAL EXPRESS

**Customer Notice of Discontinuance of Service for Non-Payment of Bills**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

Re: Telekenex Acct# 75

Dear CUSTOMER,

You are currently in default of your Master Service Agreement, and as a result Telekenex considers you a credit risk. Payment in the amount of **\$74,136.30** must be received in our office no later than **7/01/2008**. This total reflects two separate amounts.

First, the amount outstanding on your account is now **\$0.00**.

Second, you have incurred **\$74,136.30** Early Termination fees which requires a deposit amount equal to two times the New Charges as shown on your latest Invoice Statement. This is according to the Master Service Agreement (paragraphs 2 & 9) as follows :

2. Payment Terms. Invoices for Services are due and payable in U.S. dollars net (30) thirty. If any invoice is not paid by Past Due Date, Telekenex may (i) apply a late charge; (ii) require an additional Security Deposit or other form of security; and/or (iii) take any action in connection with any other right or remedy Telekenex may have under this Agreement and its tariffs, whether at law, or in equity.
  
9. Additional Assurances. If at any time during the term of this Agreement there is a material and adverse change in a Customer's financial condition, which shall be determined by Telekenex in its reasonable discretion, then Telekenex may require a reasonable deposit or increase the amount of an existing Customer deposit by a reasonable amount. If Customer refuses to provide such deposits, Telekenex may seek to terminate this Agreement. In such an event, all unpaid invoice amounts will be due immediately as will early termination and cancellation charges.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)



On 7/01/2008 at 5 p.m. a disconnect order will be submitted to our order cancellation department if payment has not been received by that time. If your service is disconnected, you will be required to pay a deposit equal to two months' usage, in addition to reconnect charges of \$35 per line. Your regulated local phone service will not be disconnected for non-payment of any charges for unregulated telecommunications services that may be included in the amount shown above.

To prevent an interruption in service and to avoid the additional charges please mail your payment today to:

Accounts Receivable  
Telekenex, Inc.  
3221 20th Street, Third Floor  
San Francisco, California 94110

If you believe that the amount now overdue was billed in error, Telekenex will investigate the disputed amount upon written request. If, after investigation and review by Telekenex, there is still disagreement over the amount due, you may appeal the dispute to the Consumer Affairs Branch of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, 1-800-649-7570.

If you have any questions regarding the amount due or wish to make arrangements for payment, please contact your Telekenex representative at (888) 469-5100. If you do not respond prior to the payment deadline we will disconnect service without further notice.

Service Representative  
Telekenex, Inc.

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

Delivering Business-Grade IP Solutions  
[www.telekenex.com](http://www.telekenex.com)

**EXHIBIT E**



**June 24, 2008**

ACCOUNTS PAYABLE  
ERIC F. ANDERSON  
1066 BEECHER STREET  
SAN LEANDRO CA 94577

RE: Telekenex Acct # 75

Dear Customer,

Telekenex has received a Notice of Termination of the Master Service Agreement.

Our records indicate that the subject account Agreement has 14 months remaining. Early termination of your Agreement will generate an Early Termination fee of **\$74,136.30**

This letter shall serve as a notice of default for early termination under the Master Service Agreement. Per the terms of your Master Service Agreement you may cure your default by sending us a letter rescinding your cancellation and reaffirming your intent to fulfill the remainder of the term of the contract. Please refer to paragraph 6 of the Master Service Agreement:

In the event of a Customer Default for any reason, Telekenex may: (1) suspend Service to Customer, (2) cease accepting or processing orders for service and/or, (3) terminate this agreement. If this agreement is terminated due to a Customer Default, such termination shall not affect or reduce Customer's minimum monthly commitments required under this Agreement, if applicable, and all Early Termination penalties shall apply. Customer agrees to pay Telekenex reasonable expenses (including attorney and collection agency fees) incurred in enforcing Telekenex rights in the event of a Customer Default.

Thank you,

*BLS*  
Brad Stasek

Accounts Receivable  
Telekenex, Inc.  
3221 Twentieth Street 3<sup>rd</sup> Floor  
San Francisco, CA. 94110

Corporate Headquarters  
3221 Twentieth Street, San Francisco, CA 94110  
TOLL FREE 1.888.469.5100 | FAX 1.866.726.1739

**Delivering Business-Grade IP Solutions**  
[www.telekenex.com](http://www.telekenex.com)

**EXHIBIT F**

**Garret D. Murai**

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**From:** Geza Paulovits [gp@efainc.com]  
**Sent:** Tuesday, July 08, 2008 1:42 PM  
**To:** Garret D. Murai  
**Subject:** FW: Disconnect for Non-Payment

Hi Garret,

Here's an email I received.

~Geza

---

**From:** Bob Finley [mailto:bfiney@telekenex.com]  
**Sent:** Tuesday, July 08, 2008 12:35 PM  
**To:** Geza Paulovits  
**Cc:** Brad Stasek  
**Subject:** Disconnect for Non-Payment

Dear Geza:

In accordance with our tariff, we are disconnecting your phones for non-payment. This was outlined to you in the letter we wrote over a week ago. Since you decided not to pay, your phones will temporarily disconnected until we receive payment.

If you would like to make a payment and have your phones re-connected, please call Brad Stasek at 415-287-1113. Brad can tell you what the amount is that is due and how to wire money to Telekenex.

Sincerely,

Bob Finley  
CFO, Telekenex

7/9/2008

# EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA

PERSEUS DISTRIBUTION, INC.,  
and PERSEUS BOOKS, L.L.C.,

Plaintiffs,

Case No. \_\_\_\_\_

v.

CF COMMUNICATIONS, LLC D.B.A.  
TELEKENEX, INC.

Defendant.

**DECLARATION OF SUSAN REICH**

I, Susan Reich, declare under penalty of perjury as follows:

1. I am President of Perseus Distribution, Inc. ("Perseus Distribution"), which is doing business as Publishers Group West and PGW ("PGW") (together, "Perseus Distribution/PGW").
2. I submit this Declaration in support of Plaintiffs' application for a temporary restraining order ("TRO") and make the following statements on personal information.
3. Perseus Distribution/PGW is a book distributor. Certain of PGW's business assets were purchased by Perseus Distribution in a transaction approved by the U.S. Bankruptcy Court for the District of Delaware effective on or about September 28, 2007.
4. For approximately the past 10 years, PGW has used the following telephone and fax numbers in the conduct of its business:

510 528 1444 Main Phone  
510 528 3444 Main Fax  
510 528 5511 Sales Fax  
510 528 7211 Executive Fax  
510 528 8167 Credit Fax  
510 528 9555 Marketing Fax  
510 558 0156 Publisher Services Fax  
510 558 0422 Human Resources Fax  
800 261 7503 IT Dial In Pool  
800 788 3122 Customer Service line

(together the "PGW Phone/Fax numbers").

5. During this period of time, significant value in the PGW Phone/Fax numbers has accumulated -- they are known and recognized by our customers as being uniquely associated with Perseus Distribution/PGW's business.
6. From 2003 to 2007, Defendant Telekenex, Inc. has been the local exchange carrier for the PGW Phone/Fax numbers. In November 2007, Perseus Distribution/PGW notified Telekenex of its intent to change carriers. Perseus Distribution/PGW made this decision due to poor service by Telekenex, including instances of service interruption.
7. In fact, on December 14, 2007 Perseus Distribution/PGW switched local carriers from Telekenex to TelePacific Communications.
8. On the afternoon of December 14, 2007, Telekenex for the first time notified Perseus Distribution/PGW that it would not release the PGW Phone/Fax numbers to TelePacific Communications.
9. Perseus Distribution/PGW made the decision to switch carriers based in part on Perseus Distribution/PGW's understanding that it had the legal right to "port" the PGW Phone/Fax numbers to its new carrier. In other words, we believed that we could keep the same numbers even though we were switching carriers.
10. Perseus Distribution/PGW immediately notified Telekenex that its action in holding hostage the PGW Phone/Fax numbers was unjustified and would cause serious harm to the Perseus Distribution/PGW business. Telekenex responded by saying that it would not release the numbers unless Perseus Distribution/PGW paid a so-called "early termination fee" of \$120,000.
11. Perseus Distribution/PGW is unaware of any valid basis for this demand for an early termination fee.
12. Telekenex is still holding the PGW Phone/Fax numbers. This unjustified action is causing harm to Perseus Distribution/PGW's business.
13. Currently, if a customer attempts to use any of the PGW Phone/Fax numbers, the customer gets only a busy signal.
14. Notwithstanding Perseus Distribution/PGW's repeated requests that Telekenex release the PGW Phone/Fax numbers, Telekenex has refused or failed to respond.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Susan Reich

Dated this 3 day of January, 2008.

# EXHIBIT 17

The Honorable Michael P. Heavey  
KING COUNTY SUPERIOR COURT CLERK  
Hearing Scheduled: Friday, July 2, 2010 at 10:00 a.m.  
E-FILED

CASE NUMBER: 09-2-25072-3 SEA

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

TELEKENEX IXC, INC., a Delaware Corporation,	)	
	)	
	)	No. 09-2-25072-3 SEA
Plaintiff,	)	
	)	DECLARATION OF
v.	)	DONALD R. SCHUCK
	)	
RESTAURANT CONCEPTS II, LLC, a Georgia Limited Liability Company,	)	
	)	
Defendant.	)	
	)	

I, Donald R. Schuck, declare as follows:

- I am over the age of eighteen, and I am competent to make this declaration and to testify to these facts in a court of law. The statements set forth in this declaration are based upon my personal knowledge.
- At all times relevant hereto, I was director of information services for defendant Restaurant Concepts II, LLC ("RCII").
- RCII was, at all relevant times, a franchisee operating Applebee's restaurants. As of April 2009, RCII operated approximately 81 restaurant locations using broadband services provided by plaintiff Telekenex IXC, Inc. ("IXC"). Our corporate offices also used IXC's broadband services.

1           4.       IXC terminated the broadband services to our restaurants, as well as our  
2 corporate offices, on April 17, 2009. Service was not restored until April 20, 2009. IXC had  
3 exclusive access to the controls providing for those services. While service was restored on  
4 April 20, 2009 to most of our facilities, several restaurant locations never had their service  
5 restored.  
6

7           5.       The day after service was restored, I received an email from Tom Hunsinger, a  
8 sales manager at IXC, stating, in bold lettering, **“We need 40K wired to our account by EOB**  
9 **[end of business] today or service will be disrupted.”** Attached to this declaration as Exhibit  
10 1 is a true and correct copy of that email. (While the email provides an AuBeta email address,  
11 my understanding is that Mr. Hunsinger was an IXC employee and that IXC was working out  
12 of AuBeta facilities and used their email addresses.) At the time that I received this email, just  
13 one day after restoration of our broadband service, now threatening another service suspension,  
14 we were disputing certain bills claimed to be owing by IXC, which was not taking into account  
15 credits that AuBeta had agreed to prior to the transfer of its business to IXC.  
16

17           6.       Facing the threatened suspension of service once again, RCII had no choice but  
18 to pay the demanded sum, which we did on the day demanded, April 21, 2009.

19           7.       As a result of IXC’s suspension of service and threatened renewed suspension of  
20 service, which we believed to be in violation of its obligations under the operative Master  
21 Services Agreement, RCII elected to switch service providers. We were unable to find one  
22 service provider to provide broadband services to all of the affected restaurants as well as our  
23 corporate offices. Instead, we now use numerous different providers, in some instances at a  
24 greater cost than those fees charged by IXC.  
25  
26



# EXHIBIT 1

## Schuck, Don

---

**From:** Tom Hunsinger [tomh@aubeta.net]  
**Sent:** Tuesday, April 21, 2009 11:52 AM  
**To:** Schuck, Don  
**Cc:** Mark Prudell; Mark Radford  
**Subject:** Telekenex - Past Due Payment

Don,

Thanks for your time today.

As we discussed, our records reflect a total past due of \$70,057.34. There is a disputed amount of \$30 due to some credits that were issued in the past.

**We need 40K wired to our account by EOB today or service will be disrupted.** The wire information is below.

The disputed amount needs to be resolved by weeks end. The former accounting clerk was not authorized to issue credits of this amount. We need to arrange a time with the appropriate accounting team members on both sides to work through this issue. If this is not resolved by weeks end the service will be disrupted. When can we arrange this meeting?

All wire transfers to AuBeta Networks/Telekenex should be sent according to the following instructions:

**Company Name:** AuBeta Networks/Telekenex  
**Address:** 801 S. Fidalgo St.  
Seattle, WA 98108

**EFT Contact Name:** Kimberly Downey  
**Remittance Advice:** [kdowney@telekenex.com](mailto:kdowney@telekenex.com)

**Bank Name:** Silicon Valley Bank  
**Address:** 4700 Carillon Point Road  
Kirkland, WA 98033  
**Routing Number:** 121140399  
**Account Number:** 3300435410

C. Thomas Hunsinger - National Account Manager



801 S. Fidalgo St. | Seattle, WA 98108  
d: 206.576.5334 | c: 425.442.9030 | f: 206.766.9100  
[thunsinger@telekenex.com](mailto:thunsinger@telekenex.com) | [tomh@aubeta.net](mailto:tomh@aubeta.net)

Confidentiality Warning: This e-mail contains information intended only for the use of the individual or entity named above. If the reader of this e-mail is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, any dissemination, publication or copying of this e-mail is strictly prohibited. The sender does not accept any responsibility for any loss, disruption or damage to your data or computer system that may occur while using data contained in, or transmitted with, this e-mail. If you have received this e-mail in error, please immediately notify us by return e-mail.

# EXHIBIT 18



620 Third Street  
San Francisco, CA 94107  
6 May 2011

Attention: PAL Coordinator  
Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue, Third Floor  
San Francisco, CA 94102

**Re: Advice Letter No. 314 of U.S. TelePacific Corp. (U-5721-C)**

Pursuant to General Order 96-B, Decision ("D.") 04-10-038, D. 97-06-096, and D. 94-05-051, U.S. TelePacific Corp. ("TelePacific") hereby transmits for filing, one original hard copy and one accompanying compact disk of its Advice Letter No.314.

The purpose of this advice letter is to notify the Commission of the proposed acquisition of the assets, including the customer base, Certificate of Public Convenience and Necessity ("CPCN") and other assets of IXCH Holdings, Inc. (U-6647-C) ("IXCH Inc.") by TelePacific's wholly-owned subsidiary, TelePacific Managed Services ("TMS").

TelePacific holds existing authority to provide facilities-based and resold local exchange and interexchange telecommunications services in California. Therefore, the acquisition of IXCH Inc. customers and assets by TMS will not result in "new entry" within the meaning of D. 04-10-038.

In accordance with the requirements of D. 04-10-038, TelePacific and TMS advise the Commission as follows:

1. Pursuant to an agreement among TMS and IXCH Inc., TMS will acquire the customer base and assets of IXCH Inc.
2. Following the transfer, TMS will provide service to IXCH Inc. customers at the same rates, terms, and conditions that currently apply to their services. All services offered by IXCH Inc. are pursuant to contract. A copy of the notice provided to the IXCH Inc. customer base, dated May 5, 2011, is attached.
3. TelePacific and TMS attest that this transaction does not have the potential to result in either direct physical change in the environment or a reasonably foreseeable indirect

physical change in the environment pursuant to the California Environmental Quality Act ("CEQA") Guideline 15378.

4. TMS will gain any necessary approvals from ILECs related to the assignment of IXCH Inc.'s interconnection agreements.

5. TMS commits to continued compliance with CPUC reporting and remittance requirements as a certified carrier in the State of California.

6. Other than as noted below, TelePacific attests that no legal complaints have been decided against it, TMS, or against IXCH Inc. , or are pending in any court in California or any other state, involving an alleged violation of Sec. 17000 et seq. of the California Business and Professions Code, any misrepresentation to consumers, or any similar violations except as follows: TelePacific has been named as a defendant in a class action lawsuit brought by Journey Brennan d/b/a Journey Financial Corp. in the California Superior Court in and for Orange County, which is designated as Case No. 30-2010-00422317-CU-MC0CXC. This lawsuit involves allegations that TelePacific has engaged in unfair business practices by imposing improper early termination fees and failing to follow appropriate number porting procedures. TelePacific believes that this lawsuit is without merit and intends to contest the case vigorously.

The most recent financial statements of TelePacific, which are stated on a consolidated basis with its parent, U.S. TelePacific Holdings Corp., are being submitted, along with most recent financials of IXCH Inc, all under seal, as files on the attached CD-ROM disk. Specifically, the financial statements are the confidential information of TelePacific, US TelePacific Holdings Corp. and IXCH Inc., respectively, and are being submitted under California Public Utilities Code Section 583 and the Commission's General Order 66-C.

TelePacific and TMS request that this advice letter be made effective thirty days after filing. A copy of this advice letter is being served on the Director of the Commission's Consumer Protection and Safety Division as well as all other persons who previously have requested to be served with copies of TelePacific's advice letters. TelePacific will also serve a copy of this advice letter on any person requesting the same.

Anyone may protest this advice letter, which was filed on May 6, 2011, by sending a written protest to: Telecommunications Advice Letter Coordinator, Communications Division, 505 Van Ness Ave., 3rd Floor, San Francisco, CA 94102-3298. The protest must set forth the specific grounds on which it is based, including such items as financial and service impact. The protest must be received by the Telecommunications Advice Letter Coordinator no later than 20 days after the date that the advice letter was filed. If you have e-mail capability, you must also e-mail a copy to the Communications Division at [TD\\_PAL@cpuc.ca.gov](mailto:TD_PAL@cpuc.ca.gov).

On or before the day that the protest is sent to the Telecommunications Advice Letter Coordinator, the protestant must send a copy of the protest to TelePacific, as follows:

Nancy Lubamersky  
Vice President, Strategic Initiatives & Public Policy  
U.S. TelePacific Corp.  
620 Third Street  
San Francisco, CA 94107  
Tel: 510-995-5602

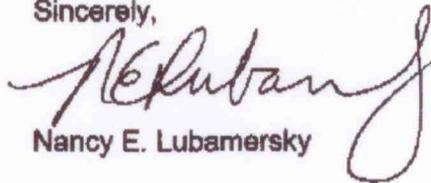
Fax: 510-995-5603

E-mail: [nlubamersky@telepacific.com](mailto:nlubamersky@telepacific.com)

To obtain information about the Commission's procedures for advice letters and protests, go to the Commission's Internet site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) and look for document links to General Order 96-B.

If there are any questions regarding this filing, please contact me. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Lubamersky", written in a cursive style.

Nancy E. Lubamersky

# EXHIBIT 19

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAIGHTSHOT	)	
COMMUNICATIONS INC., a	)	CASE NO. C10-268Z
Washington corporation,	)	
	)	
Plaintiff,	)	MINUTE ORDER
	)	
v.	)	
	)	
TELEKENEX, INC., a Delaware	)	
corporation, et al.,	)	
	)	
Defendants.	)	
_____	)	
	)	
TELEKENEX, INC., a Delaware	)	
Corporation,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
STRAIGHTSHOT RC, LLC, a Delaware	)	
limited liability company; et al.,	)	
	)	
Third-Party Defendants.	)	
_____	)	

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

01 (1) The Court ORDERS the parties to meet and confer regarding new  
02 scheduling dates for trial, the pretrial conference, and the following pretrial filing  
03 deadlines: motions in limine, the agreed pretrial order, trial briefs, proposed voir dire  
04 questions, and jury instructions. The parties shall submit a joint status report regarding  
05 the parties' proposed case scheduling deadlines no later than June 6, 2011.

06 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of  
07 record.

08 Filed and entered this 4th day of May, 2011.

09 WILLIAM M. McCOOL, Clerk

10 s/ Claudia Hawney

11 By: \_\_\_\_\_

12 Claudia Hawney  
13 Deputy Clerk  
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